

48.9795 Appointment of guardian of the person for a child.

(1) DEFINITIONS. In this section:

(a) "Interested person" means any of the following:

1. For purposes of a petition for guardianship of a child, any of the following:

- a.** The child, if he or she has attained 12 years of age, and the child's guardian ad litem and counsel, if any.
- b.** The child's parent, guardian, legal custodian, and physical custodian.
- c.** Any person who has filed a declaration of paternal interest under s. 48.025, who is alleged to the court to be the father of the child, or who may, based on the statements of the mother or other information presented to the court, be the father of the child.
- d.** Any individual who is nominated as guardian or as a successor guardian.
- e.** If the child has no living parent, any individual nominated to act as fiduciary for the child in a will or other written instrument that was executed by a parent of the child.
- f.** If the child is receiving or in need of any public services or benefits, the county department or, in a county having a population of 750,000 or more, the department that is providing the services or benefits, through the district attorney, corporation counsel, or other officials designated under s. 48.09.
- g.** If the child is an Indian child, the Indian child's Indian custodian and Indian tribe.
- h.** Any other person that the court may require.

2. For purposes of proceedings subsequent to an order for guardianship of a child, any of the following:

- a.** The child, if the child has attained 12 years of age, the child's guardian ad litem, and the child's counsel.
- b.** The child's parent and guardian.
- c.** The county of venue, through the district attorney, corporation counsel, or other official designated under s. 48.09, if the county has an interest in the guardianship.
- d.** If the child is an Indian child, the Indian child's tribe.
- e.** Any other person that the court may require.

(b) "Party" means the person petitioning for the appointment of a guardian for a child or any interested person other than a person who is alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

(2) APPOINTMENT; VENUE; NOMINATION; DUTY AND AUTHORITY.

(a) Venue. Except as provided under par. (b) 2., venue for guardianship under this section shall be in the child's county of residence, the county in which the child is physically present, or, if the child is a nonresident, the county in which the petitioner proposes that the child reside. The court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county in which a dispositional order has been issued under this chapter.

(b) Appointment.

1. This section may be used for the appointment of a guardian of the person for a child. An appointment of a guardian of the estate of a child shall be conducted under the procedures specified in ch. 54. If the court assigned to exercise jurisdiction under this chapter has jurisdiction over a proceeding for the appointment of a guardian of the person for a child or continuing jurisdiction over such a guardianship and the court assigned to exercise probate jurisdiction has jurisdiction over a proceeding for the appointment of a guardian of the estate of the child or continuing jurisdiction over such a guardianship, the court assigned to exercise jurisdiction under this chapter may order those proceedings or guardianships to be consolidated under the jurisdiction of the court assigned to exercise jurisdiction under this chapter. Upon such consolidation, the court assigned to exercise jurisdiction under this chapter shall order all records relating to the guardianship of the estate of the child to be transferred to the court assigned to exercise jurisdiction under this chapter and that court shall retain those records as required

under SCR chapter 72. This section does not prohibit a person from petitioning a court under s. 48.831, 48.977, or 48.978 for the appointment of a guardian of the person for a child.

2. If the child is the subject of any matter pending under s. 48.13, 48.133, or 48.14 (1) to (10) or (12) or ch. 938, any subsequent petition filed under this section shall be heard by the court authorized to exercise jurisdiction over the pending matter. The court shall stay a guardianship proceeding for the appointment of a full, limited, or temporary guardian of the person for a child under par. (d) 1., 2., or 3. until the matter pending under s. 48.13, 48.133, or 48.14 (1) to (10) or (12) or ch. 938 is resolved. The court may appoint an emergency guardian under sub. (6) while any matter is pending under s. 48.13, 48.133, or 48.14 (1) to (10) or (12) or ch. 938 if the court finds that the best interests of the child require the immediate appointment of a guardian.
3. A petition filed under this section may not seek to change an order under s. 48.13, 48.133, or 48.14 (1) to (10) or (12) or ch. 938.
4. The court may appoint coguardians of the person for a child under this section, subject to any conditions that the court imposes. Unless the court orders otherwise, any decision concerning the child must be concurred in by all coguardians or is void.

(c) Nomination by parent or child.

1. A parent may nominate a guardian and successor guardian for any of his or her children who is in need of guardianship, including a nomination by will. Subject to the rights of a surviving parent, the court shall appoint the person nominated as guardian or successor guardian, unless the court finds that appointment of the person nominated is not in the child's best interests.
2. A child who has attained 12 years of age may nominate his or her own guardian, but if the child is outside of the state or if other good reason exists, the court may dispense with the child's right of nomination. If neither parent of a child who has attained 12 years of age is fit, willing, and able to carry out the duties of a guardian, the court may appoint the nominee of the child.
3. In determining who is appointed as guardian, the court shall consider the nominations of the parents and child and the opinions of the parents and child as to what is in the best interests of the child, but the best interests of the child as determined by the court shall control in making the determination when those nominations and opinions are in conflict with those best interests.

(d) Duties and authority of guardian.

1. 'Full guardianship.' Subject to subds. 2. and 5., a guardian appointed under sub. (4) (h) 2. has all of the following duties and authority:
 - a. All of the duties and authority specified in s. 48.023.
 - b. Subject to an order of a court of competent jurisdiction, the authority to determine reasonable visitation with the child.
 - c. The right to change the residence of the child from this state to another state.
 - d. The duty to immediately notify the court that appointed the guardian of any change in the address of the guardian or child and to make an annual report to that court on the condition of the child. The report shall include the location of the child, the health condition of the child, and any recommendations regarding the child.
2. 'Limited guardianship.' The court may order that the duties and authority of a guardian appointed under sub. (4) (h) 2. be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (h) 2. The duties and authority of a full guardian shall apply to a limited guardian to the extent relevant to the duties or authority of the limited guardian, except as limited by the order of appointment. The court may limit the authority of a guardian with respect to any power to allow the parent to retain such power to make decisions as is within the parent's ability to exercise effectively and may limit the physical custody of a guardian to allow shared physical custody with the parent if shared physical custody is in the best interests of the child. The court shall set an expiration date for a limited guardianship order, which may be extended for good cause shown.
3. 'Temporary guardianship.' If it is demonstrated to the court that a child's particular situation, including the inability of the child's parent to provide for the care, custody, and control of the

child for a temporary period of time, requires the appointment of a temporary guardian, the court may appoint a temporary guardian as provided under sub. (5).

4. 'Emergency guardianship.' If it is demonstrated to the court that the welfare of a child requires the immediate appointment of an emergency guardian, the court may appoint an emergency guardian as provided under sub. (6).
5. 'Powers of guardian.' The parent retains all rights and duties accruing to the parent as a result of the parent-child relationship that are not assigned to the guardian or otherwise limited by statute or court order. A guardian acting on behalf of a child may exercise only those powers that the guardian is authorized to exercise by statute or court order. The court may authorize a guardian to exercise only those powers that are necessary to provide for the care, custody, and control of the child and to exercise those powers in a manner that is appropriate to the child. This paragraph does not abridge the duties and authorities of a guardian appointed under this chapter outside of this section.

(3) GUARDIAN AD LITEM.

- (a) The court shall appoint a guardian ad litem when a petition is filed for appointment of a guardian or termination of a guardianship under this section. Except as provided under sub. (6) (b) 3., the court shall appoint the guardian ad litem as soon as possible and before the initial hearing. The court shall appoint a guardian ad litem when it determines that a hearing for modification is to be held under sub. (9) (b). In a case that is contested, the guardian ad litem may file a motion pursuant to s. 48.235 (8) (b).
- (b) The guardian ad litem has the duties and responsibilities required under s. 48.235 (3) (a). The guardian ad litem represents the best interests of the child throughout the proceedings but must apply in all court proceedings the applicable standard under sub. (4) (b) 4. to 7. The guardian ad litem shall conduct a diligent investigation sufficient to represent the best interests of the child in court. 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, meeting with interested persons, and visiting the homes of the child and the proposed guardian. The guardian ad litem shall attend all court proceedings relating to the guardianship, present evidence concerning the best interests of the child, if necessary, and make clear and specific recommendations to the court at every stage of the proceedings.
- (c) To the extent necessary to fulfill the duties and responsibilities required of the guardian ad litem in the proceedings, the guardian ad litem shall inspect reports and records relating to the child and, upon presentation of necessary releases, the child's family and the proposed guardian, including law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11v., pupil records under s. 118.125 (2) (L), mental health records under s. 51.30 (4) (b) 4., and health care records under s. 146.82 (2) (a) 4. The court shall include in the order appointing the guardian ad litem an order requiring the custodian of any report or record relating to the child specified in this paragraph to permit the guardian ad litem to inspect and copy the report or record on presentation by the guardian ad litem of a copy of the order.

(5) TEMPORARY GUARDIANSHIPS.

- (a) *Duration and extent of authority.*** The court may appoint a temporary guardian for a child for a period not to exceed 180 days, except that the court may extend this period for good cause shown for one additional 180-day period. The court's determination and order appointing the temporary guardian shall specify the authority of the temporary guardian, which shall be limited to those acts that are reasonably related to the reasons for the appointment that are specified in the petition for temporary guardianship. The authority of the temporary guardian is limited to the performance of those acts stated in the order of appointment.
- (b) *Procedures for appointment.*** A petition for the appointment of a temporary guardian shall be heard in the same manner and is subject to the same requirements as provided in this section for the appointment of a full or limited guardian.
- (c) *Cessation of powers.*** The duties and powers of the temporary guardian cease upon the expiration of the period specified in par. (a), or the termination as determined by the court of the situation of the child that was the cause of the temporary guardianship. Upon cessation of a temporary guardianship, the temporary guardian shall file with the court any report that the court requires.

(6) EMERGENCY GUARDIANSHIPS.

- (a) *Duration and extent of authority.*** The court may appoint an emergency guardian for a child for a period not to exceed 60 days. The court's determination and order appointing the emergency guardian shall specify the authority of the emergency guardian and shall be limited to those acts that are reasonably related to the reasons for the appointment that are specified in the petition for emergency guardianship. The authority of the emergency guardian is limited to the performance of those acts stated in the order of appointment. An order appointing an emergency guardian may not change the placement of a child under the supervision of a court pursuant to s. 48.13, 48.133, or 48.14 (1) to (10) or (12) or ch. 938.
- (b) *Procedures for appointment.*** All of the following procedures apply to the appointment of an emergency guardian:
1. Any person may petition for the appointment of an emergency guardian for a child. The petition shall contain the information required under sub. (4) (b) and shall specify the reasons for the appointment of an emergency guardian and the powers requested for the emergency guardian.
 2. The petitioner shall give notice of the petition and of the time and place of the hearing under subd. 4. to the child, if 12 years of age or over, the child's guardian ad litem, and the child's counsel, if any; the child's parents, guardian, and legal custodian; and the person nominated as emergency guardian. The notice and a copy of the petition shall be served as soon after the filing of the petition as possible, shall be served by the most practical means possible, including personal service or service by electronic mail or telephone, and shall include notice of the right to petition for reconsideration or modification of the emergency guardianship under subd. 5. If the petitioner serves notice of the hearing after the hearing is conducted and the court has entered an order, the petitioner shall include the court's order with the notice of the hearing.
 3. The court shall appoint a guardian ad litem for the child as soon as possible after the filing of the petition. The court shall attempt to appoint the guardian ad litem before the hearing on the petition, but may appoint the guardian ad litem after the hearing if the court finds that exigent circumstances require the immediate appointment of an emergency guardian. The guardian ad litem shall conduct a diligent investigation sufficient to represent the best interests of the child in court. If the court appoints a guardian ad litem after entry of the order granting the emergency guardianship, the guardian ad litem may petition for reconsideration or modification of the emergency guardianship under subd. 5. If the court dismisses the petition for emergency guardianship prior to appointing a guardian ad litem, the court need not appoint a guardian ad litem unless the petition is refiled.
 4. The court shall hold a hearing on the emergency guardianship petition as soon as possible after the filing of the petition or, for good cause shown, may issue a temporary order appointing an emergency guardian without a hearing that shall remain in effect until a hearing is held on the emergency guardianship petition. If appointed prior to the hearing, the guardian ad litem shall attend the hearing in person or by telephone.
 5. If the court appoints an emergency guardian, any person specified in subd. 2. may petition for reconsideration or modification of the emergency guardianship and the court shall hold a rehearing on the issue of appointment of the emergency guardian within 30 calendar days after the filing of the petition.
 6. If the court determines that the welfare of the child does not require the immediate appointment of an emergency guardian, the court may dismiss the petition. Dismissal of a petition under this subdivision does not preclude the court from referring the child to the intake worker for an intake inquiry under s. 48.24 or from acting as an intake worker at the judge's discretion under s. 48.10.
- (c) *Immunity.*** An emergency guardian of a child is immune from civil liability for his or her acts or omissions in performing the duties of emergency guardianship if he or she performs the duties in good faith, in the best interests of the child, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

(d) *Cessation of powers.* The duties and powers of the emergency guardian cease upon the expiration of the period specified in par. (a), or the termination as determined by the court of the situation of the child that was the cause of the emergency guardianship. Upon cessation of an emergency guardianship, the emergency guardian shall file with the court any report that the court requires.

(7) STANDBY GUARDIANSHIP. A petition for the appointment of a standby guardian of the person for a child to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the child's parent shall be brought under s. [48.978](#).

(8) SUCCESSOR GUARDIAN.

(a) *Appointment; initial petition or during guardianship.*

1. As part of a petition for the initial appointment of a guardian of a child or at any time after that appointment, a person may petition for the appointment of one or more successor guardians of the child to assume the duty and authority of full, limited, or temporary guardianship in the event of an occurrence specified in subd. 2. Except as provided in par. (b), if the petition for the appointment of a successor guardian is brought after the initial appointment of a guardian, the petition shall be heard in the same manner and subject to the same requirements as provided under this section for an initial appointment of a guardian.
2. After a hearing, the court may designate one or more successor guardians whose appointment shall become effective immediately upon the death, unwillingness or inability to act, resignation, or removal by the court of the initially appointed guardian or during a period, as determined by the initially appointed guardian, when the initially appointed guardian is temporarily unable to fulfill his or her duties, including during an extended vacation or illness. The powers and duties of the successor guardian shall be the same as those of the initially appointed guardian. The successor guardian shall receive a copy of the court order establishing or modifying the initial guardianship and of the order designating the successor guardian. Upon the occurrence of an event specified in this subdivision, the successor guardian shall so notify the court and request the court to issue new letters of guardianship. Upon notification, the court shall issue new letters of guardianship that specify that the successor guardianship is permanent or that specify the period for a temporary successor guardianship.

(b) *Appointment; when no guardian.*

1. If a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a person who is fit, willing, and able to serve as successor guardian. The court may, upon request of any interested person or on its own motion, direct that the petition or motion for the appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this section for an initial appointment of a guardian.
2. If the appointment under subd. 1. is made without a hearing, the successor guardian shall provide notice to all interested persons of the appointment and the right to petition for reconsideration of the appointment of the successor guardian. The notice shall be served personally or by mail not later than 7 days after the appointment.