

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2107/P2dn
GMM:emw

May 19, 2015

Kimber:

This redraft incorporates DCF's recommended edits except as follows:

1. The redraft does not insert "successor" before "guardianship" at page 5, line 14 because legally there is no difference between the duty and authority of guardianship and the duty and authority of successor guardianship. Once the successor guardian is appointed as guardian, he or she is the full guardian of the child just as if he or she had been appointed as the original guardian.
2. The redraft does not remove the creation of s. 48.977 (5m) from the draft. If you read s. 48.977 (5m) carefully, you will see that it does not create any additional judicial procedures. Indeed, s. 48.977 (5m) expressly states that "the petition shall be heard *in the same manner and subject to the same requirements* as provided for the original appointment of a guardian." Rather, s. 48.977 (5m) provides a road map so that the procedure is not left to guesswork. For precedent, see s. 54.54, which similarly provides that a petition for the appointment of a guardian under ch. 54 shall be heard in the same manner and subject to the same requirements as provided for an original appointment of a guardian. Section 48.977 (5m) accomplishes the same thing in s. 48.977.

In addition, the redraft accomplishes a couple of other DCF edits, but not in the manner proposed by DCF. Specifically:

1. The redraft requires a person to undergo a background check prior to being named as a potential successor guardian not by amending s. 48.623 (2) but rather by amending s. 48.623 (6) (bm), which is cross-referenced in s. 48.623 (2).
2. The redraft prohibits ongoing background checks on a successor guardian by amending the definition of "caregiver" to limit that definition to a person who is seeking, not receiving, subsidized guardianship payments, amending the definition of "entity" to limit that definition to a person who is proposed to be named as a successor guardian, and amending s. 48.685 (3) (a) to narrow the cross-reference to s. 48.623 (6) so as to limit the ongoing background checks to interim caretakers, not successor guardians.

Gordon M. Malaise
Senior Legislative Attorney
(608) 266-9738
gordon.malaise@legis.wisconsin.gov