

## CHILDREN & THE LAW SECTION

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April 17, 2012

RE: Guardianships of children (2011 SB 560)

The Children & the Law Section propose to revise and update current law regarding the guardianships of children.

This bill seeks to repeal those portions of Chapter 54 which provide for the appointment of a guardian of the person of a minor and, in its place, create Wis. Stat. § 48.976. The Children & the Law Section of the State Bar of Wisconsin believes this legislation – and the insertion of this law into Chapter 48 - is necessary to improve the legal process for meeting the needs of children whose parents are unable to provide for their physical care. Guardianship of the estate of a minor will remain in Chapter 54.

When Chapter 880 was repealed and Chapter 54 created, the primary focus was on improving how guardianships for the elderly and disabled were sought, granted and administered. While guardianships for children were included in that rewrite, the needs of a minor under guardianship are separate and distinct and, therefore, not fully addressed in Chapter 54. The development of mandatory circuit court forms for Chapter 54 guardianships brought the distinctions between adult guardianships and minor guardianships into sharp focus. Judges, guardians ad litem, private practitioners, corporation counsel, district attorneys and county agencies working in juvenile court approached Section members urging a specific law for minor guardianships. This proposed legislation builds on the improvements in Chapter 54 and incorporates most of the protections which both Chapter 54 and its predecessor, Chapter 880, provided for children while addressing the unique needs of minors.

Some of the specific issues which are addressed by the creation of Wis. Stat. § 48.976 include the development of four distinct categories of guardianship (full, limited, temporary and emergency), clarification of who is an interested party as it relates to a minor, clarification of parental rights when a guardianship is granted, clarification of the responsibilities and rights of the guardian, clarification of the legal standard and burden of proof for petitioning for and terminating a guardianship as well as clarification of the procedural steps for each of these proceedings and clarification of the duties of a guardian ad litem. The bill also incorporates the case law standard for an involuntary removal of guardianship rights from a parent.

The guardianship reform bill for minors provides a comprehensive change to the existing guardianship laws that impact children in the following manner:

1. This reform bill was developed by practitioners who work on children's issues in the courts on a daily basis. The intent of this legislation was to eliminate the confusion, inconsistency and barriers that currently exist for implementing guardianship proceedings for a minor in Wisconsin by removing these legislative obstacles.



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2. Current guardianship statutes under Chapter 54 combine both adult and minor guardianship law. Unfortunately, the procedures that exist under Chapter 54 for adults needing guardianship orders are not differentiated for juveniles. As a result, the current law under Chapter 54 is unable to respond to the unique issues that only impact minors requiring guardianship such as emergency, limited or full decision making authority.
3. The body of case law regarding minor guardianship which has evolved from the former existence of Guardianship laws under Chapter 880 and currently Chapter 54 is not incorporated into the existing statutes. As a result because of the lack of clarity in existing statutes, decisions by Courts in minor guardianship cases are frequently inconsistent on a state wide basis.
4. The proposed reform bill removes these impediments in the following manner:
  - A. Guardianship laws for minors is separated from the existing guardianship law affecting adults in Chapter 54 and is placed in Chapter 48 – The Children’s Code.
    - This provides an ease of reference for those accessing all of the guardianship laws of minors.
    - Currently, certain limited guardianship proceedings involving foster children are included under the children’s code in Chapter 48.
    - This will eliminate confusion and increase ease of access and application.
  - B. The specific types of guardianships affecting decision making on the issues affecting minors is specifically addressed under this proposed legislation whereas the current law does not address this.
    - This legislation creates four (4) types or categories of guardianships ranging from emergency, temporary, limited to full guardianship.
    - These four (4) types or categories of guardianship specifically address the unique decision making problems that caretakers, parents and the Courts must face with a minor.
    - The necessity for these types of guardianship does not exist with adult guardianships.
  - C. The specific procedural legal requirements that accompany these types of guardianships are designed to respond to the specific time frames that the particular type of guardianship requires.
    - The procedures for emergency guardianship are crafted so that the court is able to respond quickly when necessary.
    - Other non-emergent guardianships have a different procedural requirement that provide for timely decision making.
    - The length of time that such a court order will remain in effect is clearly delineated based on the type or category of guardianship transferred.
  - D. The body of case law which has evolved interpreting minor guardianship laws under the prior Chapter 880 and the current Chapter 54 is now incorporated into this reform bill.
    - This legislation incorporates the case law into the statutes.

- The standards established by the Courts are clearly expressed in the statutes delineating clear guidelines and criteria to follow eliminating speculation and confusion.
- Previous areas which the case law and statutes did not address are now addressed and clarified.
- This should eliminate speculation and/or inconsistent application of the minor guardianship law state wide.

The Children & the Law Section believes this legislation vastly improves the guardianship law as applied to minors. If you have any questions or need additional information, please contact Sandy Lonergan at 250-6045 or [slonergan@wisbar.org](mailto:slonergan@wisbar.org). Thank you.

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*The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.*

*If you have questions about this memorandum, please contact Sandy Lonergan, Government Relations Coordinator, at [slonergan@wisbar.org](mailto:slonergan@wisbar.org) or (608) 250-6045.*