

APPENDIX A

Appendix A – Guardianship Comparative Chart and FAQ’s

Guardianships of the Person for Children under Wis. Stat. Ch. 48 and Ch. 54

Wis. Stat. 48.977 guardianships of the person were created as an alternative to Wis. Stat. Ch. 54 (former Chapter 880) guardianships to address the issue of obtaining permanency for children who are placed out of the home.

To appoint a guardian of the person for a child under Wis. Stat. 48.977, a court must determine that the child has been found in need of protection or services under Wis. Stat. 48.13(1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or (11m), or Wis. Stat. 938.13(4), and been placed, or recommended to be placed, outside of his or her home pursuant to court order. The court must also find that the person nominated to be guardian is willing and able to serve as the child’s guardian for an extended period of time or until the child turns 18. Finally, the court must find each of the additional requirements contained in Wis. Stat. 48.977(2)(d)-(f).

To appoint a guardian of the person for a child under Wis. Stat. Ch. 54, a court is only specifically required to find that the child is less than 18 years of age. *See* Wis. Stat. 54.10(1). However, additional findings may be required depending on the circumstances of each case, especially if the petition is filed by a non-parent over the objection of a parent. *See In re Guardianship of James D.K.*, 291 Wis.2d 333, 718 N.W.2d 38 (2006); *Barstad v. Frazier*, 118 Wis.2d 549, 348 N.W.2d 479 (1984).

The table below compares key provisions related to the appointment of guardians of the person for children under both chapters. Following the table is a list of frequently asked questions that have arisen regarding guardianships of the person for children.

	Chapter 48	Chapter 54
Eligible petitioners.	<p>The following individuals or entities may file guardianship petitions: DCF; county human services or social services agency; licensed child welfare agency; the child; the child's legal custodian or guardian; the person nominated to be the guardian; the corporation counsel or district attorney representing the public; the child's GAL; or the child's parent.</p> <p>Wis. Stat. § 48.977(4)(a).</p>	<p>Any person may file a guardianship petition.</p> <p>Wis. Stat. § 54.34(1).</p>
Guardian qualifications.	<p>The person the child has been placed or recommended to be placed with; and the person is willing and able to serve as guardian for extended period or time or until child turns 18.</p> <p>A parent may NOT be a guardian.</p> <p>Wis. Stat. § 48.977(2)(b)-(c).</p>	<p>Any person.</p> <p>A parent may be a guardian.</p> <p>Wis. Stat. § 54.01(10).</p>
Notice requirements.	<p>The guardianship petition and notice of the plea hearing must be provided by the petitioner to: 1) any child 12 years or older; 2) the child's guardian or legal custodian; 3) the child's GAL; 4) the child's attorney; 5) the child's parent; 6) the person with whom the child is placed or in whose home placement is recommended; 7) any person alleged to be the father of the child; 8) the corporation counsel or DA representing the public; and 9) the agency primarily responsible for providing services to the child under a court order.</p> <p>Wis. Stat. § 48.977(4)(c).</p>	<p>The guardianship petition and notice of hearing on petition must be provided by the petitioner to: 1) the child if the child is over 14 years of age; 2) the child's spouse, if any; 3) the child's parent, unless the rights of the parent have been judicially terminated; and 4) any person who has legal or physical custody of the child.</p> <p>Wis. Stat. § 54.38(1), (3).</p>

<p>Required hearings.</p>	<p>Plea, fact-finding (if petition is contested), and dispositional.</p> <p>If requested, revision hearings, hearings to remove a guardian for cause, or hearing to terminate a guardianship.</p> <p>Wis. Stats. §§ 48.977(4)(cm), (d), (fm), (6)(b), (7)(b)2., (7)(c)2.</p>	<p>Hearing on petition and jury trial (if requested by the child, child’s attorney or GAL).</p> <p>If requested, hearing to review the conduct of the guardian or hearing to modify or terminate the guardianship.</p> <p>Wis. Stat. §§ 54.42(2), 54.44(1), 54.64(2), 54.68(3).</p>
<p>Timelines for:</p> <p>Ch. 48 plea, fact-finding, and disposition hearings.</p> <p>Ch. 54 hearing on petition.</p>	<p>Plea 30 days from filing of petition; fact-finding (if contested) or disposition (if uncontested) 30 days from the plea; and disposition 30 days from any contested fact-finding hearing.</p> <p>Wis. Stat. § 48.977(4)(cm), (d).</p>	<p>Hearing on petition within 90 days of filing of petition.</p> <p>Wis. Stat. § 54.44(1).</p>
<p>Effect of guardianship on CHIPS/JIPS order.</p>	<p>The CHIPS/JIPS order will continue until it expires or the court terminates supervision.</p> <p>Termination of the CHIPS/JIPS order does not terminate the guardianship.</p>	<p>If there is a CHIPS/JIPS order, the order will continue until it expires or the court terminates supervision.</p> <p>Termination of the CHIPS/JIPS order does not terminate the guardianship.</p>
<p>Effect of guardianship on permanency planning.</p>	<p>The permanency plan shall continue to be reviewed under Wis. Stat. §§ 48.38(5)-(5m) or 938.38(5)-(5m) if the CHIPS/JIPS order remains open.</p> <p>Wis. Stat. § 48.977(4)(i).</p>	<p>If the child is under a CHIPS/JIPS dispositional order, the permanency plan shall be reviewed pursuant to</p> <p>Wis. Stat. §§ 48.38(5)-(5m) or 938.38(5)-(5m).</p>
<p>Duties and powers of the guardian.</p>	<p>Unless specifically limited by the guardianship order, the guardian has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, including the child’s general welfare. This includes the authority to consent to marriage, enlistment in the military, medical and psychiatric treatment, and obtaining a driver’s license. It also includes the right to represent the child in legal proceedings, the right and duty of reasonable visitation with the child, and the rights and responsibilities of legal custody.</p>	<p>Unless specifically limited by the guardianship order, when a court appoints a guardian for a minor, the guardian shall be granted care, custody, and control of the person as well as other specific rights provided by statute (§ 54.25(2)(d)2.) or court order. These include, but are not limited to the power to make decision related to medical treatment and education. The guardian must exercise the degree of care, diligence, and good faith when acting on behalf of a child that an ordinarily prudent person exercises in his or her own affairs. This includes the duty to secure any necessary care or services for the child that are in</p>

		<p>the child's best interests.</p> <p>The guardian must submit an annual report on the conditions of the child, which includes the child's current living location.</p>
	Wis. Stat. § 48.023.	Wis. Stat. § 54.25(2)(d)1.-3.
Revision of Guardianship Order.	<p>Any person who is eligible to file a petition for guardianship may request that the guardianship order be revised. A guardianship order may be revised if the court finds that there has been a substantial change in circumstances since the previous dispositional or revision order.</p>	<p>The guardianship order may be reviewed and modified at the request of the guardian or any person acting on the minor's behalf.</p>
	Wis. Stat. § 48.977(6).	Wis. Stat. § 54.64(2).
Removal of the guardian.	<p>Any person who is eligible to file a petition for guardianship may request that a guardian be removed for cause. For a guardian to be removed for cause, the court must find by clear and convincing evidence that the guardian is or has been neglecting, refusing, or unable to discharge the duties of a guardian.</p> <p>A guardian may also resign the guardianship subject to the court's approval.</p>	<p>Any person may petition the court to remove the guardian for cause. For a guardian to be removed for cause, the court must find any of the conditions listed in Wis. Stat. § 54.68(2), which includes failing to act in the best interests of the child.</p>
	Wis. Stat. § 48.977(7)(b)-(c).	Wis. Stat. § 54.68.
Termination of guardianship.	<p>When the child turns 18 or by order of the court.</p> <p>A parent of a child may request that a guardianship order be terminated. For a guardianship to be terminated on the request of a parent, the court must find by clear and convincing evidence that there has been a substantial change of circumstances since the last order and that the parent is willing and able to carry out the duties of a guardian. The court must also find that terminating the guardianship would be in the best interests of the child.</p>	<p>When the child legally marries, turns 18, or by order of the court.</p>
	Wis. Stat. § 48.977(7).	Wis. Stat. § 54.64(3).

<p>Child's Right to Representation</p>	<p>The court shall appoint a guardian ad litem for any child who is the subject of a guardianship proceeding.</p> <p>A court may appoint adversary counsel for children in a guardianship proceeding.</p> <p>Wis. Stat. §§ 48.23(3), 48.235(1)(c).</p>	<p>The court shall appoint a guardian ad litem for the child when a petition for guardianship is filed and for other proceedings listed in Wis. Stat. § 54.40(1).</p> <p>The child has a right to counsel if they request counsel, the GAL or another person tells the court that the child is opposed to the guardianship, or the court determines that counsel is required.</p> <p>Wis. Stat. §§ 54.40, 54.42(1).</p>
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Frequently Asked Questions

What court has jurisdiction of Wis. Stat. Ch. 48 and Ch. 54 guardianships? Guardianships under both chapters are within the exclusive jurisdiction of the juvenile court pursuant to Wis. Stat. 48.14(2)(b), regardless of whether there is an underlying CHIPS/JIPS case.

What case type should be used for Wis. Stat. Ch. 48 and Ch. 54 guardianships? The Model Recordkeeping Procedures Manual does not dictate which case type must be used. Under both chapters, assign a JG or GN case type, depending on local practice. Regardless of the guardianship case type used, the guardianship case should be cross-referenced with any CHIPS or JIPS case.

What role does the court play after an order appointing a guardian is entered under Wis. Stat. Ch. 48 and Ch. 54? Under both chapters, the court retains jurisdiction after entering an order for guardianship. The court will conduct permanency planning, if required, and conduct hearings to revise the guardianship order, remove the guardian, or judicially terminate the guardianship, if requested. Even if a guardian is appointed for a child, permanency planning is required as long as the child also remains under a court order under a CHIPS/JIPS dispositional order.

Is a guardian in Wis. Stat. Ch. 48 or Ch. 54 required to file anything with the court after being appointed? Under Chapter 54, the guardian is required to file an annual report with the court. The required contents of the report can be found in Wis. Stat. 54.25(1)(a). A form, *Annual Report on the Condition of the Ward GN-3480*, is available for this purpose. There are no such reporting requirements for a Chapter 48 guardian.

Does either Wis. Stat. Ch. 48 or Ch. 54 require the child to live with the guardian? Under Chapter 48, the child must either live with the guardian or be recommended to live with the guardian at the time the petition for guardianship is filed. Under Chapter 54, the child is not required to live with the guardian.

Does anything in Wis. Stat. Ch. 48 or Ch. 54 prohibit the child from being subsequently adopted after the entry of a guardianship order? Under both chapters, a child may be subsequently adopted, but only if the parents rights are terminated.

Does a birth parent have a right to visitation once a Wis. Stat. Ch. 48 or Ch. 54 guardianship is entered? Under both chapters, courts may proscribe or prohibit visitation between a birth parent and child consistent with the best interests of the child and as required by statute. For example, Wis. Stat. 54.57 prohibits the court from ordering visitation with a parent who murdered the child's other parent, unless the court specifically finds that such visits would be in the child's best interests. If visitation is being denied or restricted by the guardian, the parent may request that the court revise the dispositional order to specifically address or change visitation.

Do the “reasonable efforts to prevent removal”, “contrary to the welfare”, or “reasonable efforts to achieve the permanency goal” findings need to be made when a guardianship is entered under Wis. Stat. Ch. 48 or Ch. 54? Under Wis. Stat. 48.977, the court must make all of the findings in Wis. Stat. 48.977(a)-(f) at the time the guardianship is ordered, including that the “agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home.” The statute further provides that the court must find the agency “has made reasonable efforts to prevent the removal of the child from his/her home, except when the court is not required to make a reasonable efforts finding as specified in Wis. Stat. 48.355(2d)(b)1. to 5., while assuring the child’s health and safety, but that continued placement of the child in the home would be contrary to the welfare of the child.” Chapter 54 does not require these findings. There is no specific requirement that the “reasonable efforts to achieve the permanency goal” finding be made at the time the guardianship is entered. However, the “reasonable efforts to achieve the permanency goal” finding is required at permanency hearings. Permanency hearings shall be conducted when the child is under a CHIPS/JIPS dispositional order pursuant to Wis. Stat. 48.38(2) and 938.38(2).

How are subsidized guardianships different from other guardianships for a child? Under Wis. Stat. 48.977(3r), subsidized guardianship payments are available in Ch. 48 guardianship cases in all counties as of July 1, 2011. Even though additional paperwork regarding subsidized guardianship eligibility may be filed with the court, it does not affect how the guardianship case is opened or handled in CCAP. An agency’s request for the court to approve subsidized guardianship payments is part of the Ch. 48 guardianship case. The same juvenile guardianship forms should be used: *Petition for Appointment of Guardian/Notice of Hearing* (JC-1605) and *Dispositional Order Appointing Guardian* (JC-1606). Subsidized guardianships are not available in Ch. 54 guardianship cases. Please note that one of the requirements for a subsidized guardianship is that the underlying CHIPS case must be terminated or dismissed.