

# Report to the Joint Legislative Council

## Study Committee on Minor Guardianships



January 4, 2019

LCR 2019-01

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# STUDY COMMITTEE ON MINOR GUARDIANSHIPS

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January 04, 2019

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## CONTENTS

<b>PART I: KEY PROVISIONS OF COMMITTEE RECOMMENDATION.....</b>	<b>3</b>
LRB-0241/2, Relating to Guardianships of Children .....	3
<b>PART II: COMMITTEE ACTIVITY .....</b>	<b>5</b>
Assignment.....	5
Summary of Meetings.....	5
<b>PART III: RECOMMENDATION FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL .....</b>	<b>13</b>
LRB-0241/2, Relating to Guardianships of Children .....	13
Background .....	13
Description .....	13
<b>APPENDIX 1 -- STUDY COMMITTEE VOTE .....</b>	<b>19</b>
<b>APPENDIX 2 -- JOINT LEGISLATIVE COUNCIL [s. 13.81, STATS.].....</b>	<b>21</b>
<b>APPENDIX 3 -- STUDY COMMITTEE ON MINOR GUARDIANSHIPS.....</b>	<b>23</b>
<b>APPENDIX 4 -- COMMITTEE MATERIALS LIST .....</b>	<b>25</b>



# PART I

## KEY PROVISIONS OF COMMITTEE RECOMMENDATION

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The Study Committee on Minor Guardianships recommends the bill draft described below to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature.

### **LRB-0241/2, RELATING TO GUARDIANSHIPS OF CHILDREN**

LRB-0241/2 makes various changes relating to private guardianships of a child's person, referred to generally as "private minor guardianships." Key provisions include:

- A new statute governing private minor guardianships in a new subchapter under ch. 48, Stats.
- Transfer of jurisdiction over private minor guardianships from the probate court under ch. 54, Stats., to the children's court under ch. 48, Stats.
- Creation of four types of private minor guardianships: full; limited; temporary; and emergency.
- Court procedures specific to the newly created types of private minor guardianships.
- Legal standards that a court must apply in a private minor guardianship.
- New guardian ad litem (GAL) duties and responsibilities specific to private minor guardianships.



# PART II

## COMMITTEE ACTIVITY

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### ASSIGNMENT

The Joint Legislative Council established the Study Committee on Minor Guardianships and appointed the chairperson by a mail ballot dated April 9, 2018. **Appendix 2** identifies the membership of the Joint Legislative Council at the time the mail ballot was approved. The committee was directed to examine ch. 54, Stats., concerning guardianship of minors and adults, recommend legislation that creates procedures specific to guardianship of a minor, and consider whether any new provisions should apply to guardianship of a minor's person, estate, or both.

Membership of the study committee was appointed by a mail ballot dated June 4, 2018. The final committee membership consisted of three representatives, one senator, and seven public members. A list of committee members is included as **Appendix 3** to this report.

### SUMMARY OF MEETINGS

The committee held four meetings on the following dates:

- July 24, 2018.
- August 28, 2018.
- October 23, 2018.
- November 29, 2018.

At the committee's July 24, 2018 meeting, Chair Steineke welcomed committee members. He explained that his interest in the committee was prompted by a constituent's concerns regarding current law. His goal for the committee's work is to make the laws governing private minor guardianships more clear and workable for guardians, practitioners, courts, and others involved in the legal system.

Amber Otis, staff attorney, summarized background information relating to minor guardianships under Wisconsin law. She noted that ch. 54, Stats., which applies to guardianships of minors and certain adults, generally constitutes Wisconsin's guardianship law, but that minor guardianships are also authorized in certain, specialized circumstances under ch. 48, Stats. She noted that the committee is instructed to focus on minor guardianships under ch. 54, Stats., and, therefore, provided a summary of ch. 54, Stats., and related case law.

Steve McCarthy, staff attorney, outlined recent legislative proposals introduced in the 2009 and 2011 legislative sessions, as well as a more recent bill draft (LRB-0921/P5), all of which are products of the State Bar of Wisconsin's Children & the Law Section. He outlined major components

of the legislative efforts, including: placing the private minor guardianship statutes into ch. 48, Stats.; creating four distinct types of guardianships for minors; updating and clarifying procedural requirements; and codifying certain aspects of case law.

He further identified a nonexhaustive list of issues for the committee to consider. Such issues included: the scope of the committee's assignment; the extent to which the committee relies upon the previous legislative efforts as a basis for the committee's work product; the manner in which existing case law should be addressed in statute; and what, if any, new rights should be afforded a minor subject to a guardianship order.

**Jessica Jablonske, constituent, 5<sup>th</sup> Assembly District**, shared her experience as guardian appointed under ch. 54, Stats. Specifically, she outlined the events giving rise to the guardianship and her experience with the legal system. She identified certain issues with current law, including inconsistency in the application of constitutional standards imposed by case law, confusion as to the definition of "best interest of the child," and her concern for guardians' lack of rights in the process.

As members of the state bar's working group, **Attorneys Henry Plum and Theresa Roetter** presented to the committee regarding ch. 54, Stats., including its history and current problems, and described how LRB-0921/P5 seeks to address those problems. Specifically, Attorney Roetter outlined the following problems: the statutes contain multiple definitions of legal custody and guardianship; case law has developed standards that are not codified in statute; and procedures under ch. 54, Stats., are not compatible with minors.

Attorney Plum explained that, to address these issues, LRB-0921/P5 includes the following changes: clarification of the guardian's authority; use of four types of guardianship, including the creation of an emergency guardianship; codification of the legal standard under case law for appointing a guardian, in that the petitioner must establish "that the parent is unfit, unwilling or unable to provide for the care, custody, and control of the child or other compelling facts and circumstances demonstrating that a full guardianship is necessary"; and revision of several procedural aspects of guardianship proceedings.

**Public Member Professor Gretchen Viney** provided the perspective of a GAL in minor guardianship proceedings under ch. 54, Stats. She clarified that a GAL is a court-appointed lawyer who serves as a trial advocate for the best interest of the child. She explained that while the GAL represents the best interest of the child, that is not the legal standard for guardianship, which creates confusion for those involved in the process. She also explained that, as an attorney to the proceeding, the GAL presents evidence and cannot be a witness and is not subject to discovery.

Professor Viney identified issues for the committee to consider when analyzing LRB-0921/P5. Such issues included, generally, the need to clarify the applicable standards for certain guardianship issues (such as reasonable visitation or the suitability of the guardian) by employing defined terms or multi-factor tests, and the option to have other professionals investigate the suitability of the guardian and the needs of the child, in light of the ethical issues posed by the GAL's role as an attorney for the child's best interest.



Committee members requested additional types of information and engaged in a preliminary discussion of LRB-0921/P5. Topics of discussion included the costs of the investigation created by the bill draft, the constraints imposed by constitutional case law, duties of the GAL, the definition of “legal custody,” and the extent to which a parent retains certain rights when a guardian is appointed.

Legislative Council staff indicated that, in consultation with the chair, they would compile additional information for the next meeting, including data on Wisconsin guardianships, legal research regarding the constitutional limits imposed by case law, and other states’ approaches to the duties of GALs.

At the August 28, 2018 meeting, Randall Keys, chief legal counsel, Department of Children and Families (DCF) read a prepared statement outlining DCF’s concerns with the state bar working group’s bill draft. Generally, DCF supports improving the laws governing private minor guardianships. However, DCF noted the challenges of combining private guardianship procedures with the public welfare procedures, and the impacts of moving the private guardianship provisions into ch. 48, Stats.

Mr. Keys and **Therese Durkin, attorney, DCF**, responded to a number of questions from committee members, including questions about subsidized guardianships, the intersection of public and private interests in the termination of parental rights statutes, potential impacts on county workers, and unintended consequences of the state bar working group’s bill draft.

Legislative Council staff described their materials distributed to the committee. The materials included a chart comparing Wisconsin’s guardianship procedures for both private guardianships under ch. 54, Stats., and public guardianships under ch. 48, Stats., an update on the Wisconsin State Courts’ efforts to collect data on guardianships from the Consolidated Court Automation Program, and an analysis of the application of *Barstad v. Frazier*, 118 Wis. 2d 549 (1984), in termination of guardianship proceedings.

Legislative Council staff also described research of other states’ laws regarding the duties of a GAL in private minor guardianships, survey data on certain aspects of guardianship collected by Kids Matter, Inc., and a memorandum prepared by Legislative Council staff highlighting potential discussion points for the committee’s discussion of its assignment.

Chair Steineke opened the discussion by reminding committee members that the state bar working group’s bill draft should be considered only as a starting point for the committee, and all members were free to offer opinions and ideas to the committee to create its own legislative product.

Members discussed DCF’s concerns regarding placement of private minor guardianship statutes into ch. 48, Stats. Members agreed both that the committee’s bill draft should insert a private minor guardianship statute into ch. 48, Stats., and that any provisions in the state bar working group’s bill draft that do not address private minor guardianships should not be included in the committee’s bill draft.

The committee reviewed many of the discussion points highlighted by Legislative Council staff, including a robust discussion regarding the scope of and payment for the investigation that a

court may order in contested guardianships under the state bar working group's bill draft. For its initial draft, members agreed to make a number of modifications to the state bar working group's bill draft, including revising provisions relating to notice requirements and removing language allowing a court to order an investigation in contested private minor guardianship cases.

The committee discussed a number of items relating to the application of the *Barstad* case to the committee's bill draft. Legislative Council staff discussed in more detail various potential constitutional issues identified in the materials distributed to the committee.

Members agreed not to codify the *Barstad* case's nonexhaustive list of "compelling reasons" that could affect the welfare of the child and give cause to appointing a guardian in a contested case, opting instead for the draft to allow courts to determine whether "compelling reasons" exist on a case-by-case basis. Members also agreed that the committee's draft should incorporate a bifurcated procedure in which the court must first find either parental unfitness or inability, or the existence of "compelling reasons," before it may consider whether appointing a guardian is in a child's best interest.

The committee discussed a number of issues relating to cases in which a parent petitions for termination of a guardianship. The committee agreed that the burden of proof in such cases should be placed on the parent, but that the standard of proof should be lowered to "by a preponderance of the evidence," rather than "by clear and convincing evidence." The committee also agreed to require a parent petitioning for termination to allege and prove a substantial change in circumstances, that the parent is fit, and that the best interest of the child requires termination of the guardianship.

The committee also discussed the state bar working group's bill draft language regarding the role and duties of the GAL. Committee members agreed to retain much of the language, but asked for certain modifications, including clarifying the scope of the GAL's investigation and report to the court and creating a definition for the term "suitability," among others.

At the **October 23, 2018** meeting, Legislative Council staff described the following materials distributed in advance of the meeting: a bill draft, LRB-0241/P4, relating to guardianships of children; Legislative Council Study Committee Memorandum, *Description of LRB-0421/P4, Relating to Guardianships of Children* (October 16, 2018); and Legislative Council Study Committee Memorandum, *Topics for Committee Discussion* (October 16, 2018).

Legislative Council staff answered questions regarding the changes made to the state bar working group's bill draft to create the committee's bill draft, LRB-0241/P4. Chair Steineke, Vice Chair Johnson, and Legislative Council staff facilitated discussion regarding LRB-0241/P4, the topics identified in Legislative Council Study Committee Memorandum, *Topics for Committee Discussion*, and other topics raised by committee members.

First, the committee discussed the bill draft's standard for terminating a guardianship when requested by a parent or child. Specifically, committee members acknowledged that current statutory law does not address the standard to be applied when a parent seeks to terminate a guardianship. Some committee members expressed concern that requiring a parent to show that the termination is in the child's best interest may conflict with the *Barstad* case and its progeny.

Committee members generally acknowledged that litigation could occur and that ultimately a court would have to address whether any conflict exists. Several committee members supported including the best interest requirement, stating that it provides a more child-centered approach, that certain case law has acknowledged that a child's best interest is relevant, and that use of the lower burden of proof strikes an appropriate balance. Ultimately, committee members reached consensus to maintain the bill draft's language regarding the standard, burden, and procedure for termination of a guardianship upon request of a parent or child.

The committee then discussed issues related to inserting a new statute governing private minor guardianships in ch. 48, Stats., as outlined on pages 1-4 of the Legislative Council Study Committee Memorandum, *Topics for Committee Discussion*. After discussion, the committee instructed Legislative Council staff to amend the bill draft as follows: clarify that s. 48.293, Stats., governing discovery of records, does not apply to a GAL appointed under the new statute; create certain statutory exceptions so that civil, rather than criminal, appellate procedures apply to appeals of private minor guardianships, as is required under current law; modify various cross-references throughout the bill draft, with the intent that proceedings under the proposed new statute will not affect court orders under chs. 48 and 938, Stats.

Next, the committee discussed whether a child subject to proceedings under the proposed new statute should have a right to counsel. The committee agreed not to include such a right, though members confirmed that current law gives courts discretion to appoint counsel for a child subject to proceedings under the proposed new statute in certain circumstances.

The committee also reviewed the proposed definition for "suitability," a term used in the proposed new statute when requiring the GAL to report to the court concerning the "suitability" of the proposed guardian. The committee disapproved of both the proposed definition and use of the term in the proposed new statute. The committee instructed Legislative Council staff to remove the term from the bill draft and instead employ the "fit, willing, and able" standard which is used elsewhere in the new statute.

The committee then discussed the concept of a third-party investigation in contested cases under the proposed new statute. While the committee approved of the bill draft's omission of any investigation by child welfare agencies, several committee members commented that some type of third-party investigation would be useful to the court. Ultimately, the committee instructed Legislative Council staff to amend the bill draft to clarify that, in contested cases under the proposed new statute, a GAL may request court approval for use of and payment for an expert witness, as allowed under current law in ch. 48, Stats.

The committee also addressed various topics concerning visitation, custody, and physical placement, as outlined on pages 6-8 of the Legislative Council Study Committee Memorandum, *Topics for Committee Discussion*. The committee requested removal of any references to ch. 767, Stats., in the new statute. With regard to custody, the committee agreed that a parent should retain any rights not granted to a guardian and that the bill draft's language governing limited guardianships reflected that intent. With regard to physical placement, the committee requested removal of that term on page 35 of the bill draft, because "physical placement" is not contemplated elsewhere in the new statute.

The committee then discussed the bill draft's provisions relating to modification of guardianship orders. Specifically, because current law does not contain a statutory mechanism for modifying a guardianship order, committee members discussed certain procedural aspects of this new provision. Committee members agreed to maintain the bill draft's language and not specify the types of issues for which a party could seek a modification. The committee also instructed Legislative Council staff to amend the bill draft as follows: require appointment of a GAL only if a hearing will be held on a request for modification; and eliminate, for purposes of avoiding a hearing on a request for modification, the requirement that a written waiver of objection be signed by the child subject to the guardianship.

Next, the committee discussed the bill draft's nonstatutory sections. While some members expressed interest in employing a delayed effective date of three months, rather than six months, the committee ultimately agreed to maintain the bill draft's use of a six-month delayed effective date, in order to provide sufficient time for changes to mandatory court forms.

Finally, the committee discussed issues related to the role of the GAL in proceedings under the new statute. Professor Viney expressed concern regarding the bill draft's requirements of the GAL, because a GAL is an attorney serving as a trial advocate for the best interest of the child and, under the ethical rules, cannot be a witness at a proceeding. Professor Viney proposed alternative language governing GALs in private minor guardianship cases, arguing that such language would clarify the GAL's legal position, as well as the scope and duties of the GAL's investigation. Committee members requested that Professor Viney's proposed language be distributed at the next meeting for consideration in the committee's final bill draft.

At the final committee meeting on **November 29, 2018**, Legislative Council staff summarized the changes made by the committee to the bill draft at the previous meeting and described the proposed amendment to LRB-0241/1 provided by Professor Viney for the committee's consideration.

Professor Viney explained to the committee that her proposed amendment uses language intended to better capture the role of a GAL in a private minor guardianship.

The committee discussed the proposed amendment and agreed to make a number of changes to the proposed amendment. Specifically, the committee reached general consensus to make all of the following changes to the proposed amendment and incorporate the updated amendment into LRB-0241/1: require the GAL to complete a "diligent" investigation; clarify that the GAL may complete certain aspects of an investigation personally or through a trained designee; provide that the GAL must comply with certain specific duties and responsibilities required of a GAL under ch. 48, Stats.; clarify that the GAL may meet with "interested persons" as defined in the bill; and retain certain provisions from LRB-0241/1, relating to GAL access to records.

After all members were given an opportunity to propose and discuss any changes, Chair Steineke entertained a motion to approve the bill draft.

*Mr. Plum moved, seconded by Ms. Roetter, to approve LRB-0241/1, with the changes enumerated above, and recommend introduction by the Joint Legislative Council. The motion was approved on a vote of*

*Ayes, 10 (Reps. Steineke, Kolste, and Tittl; Sen. Johnson; and Public Members Conwell, DeVore, Plum, Roetter, Rosborough, and Viney); Noes; 0; and Absent, 1 (Public Member Schneider).*



# PART III

## RECOMMENDATION FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL

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### LRB-0241/2, RELATING TO GUARDIANSHIPS OF CHILDREN

#### **Background**

The Study Committee developed and approved LRB-0241/2, relating to private guardianships of children, in response to the committee's charge.

Chapter 54, Stats., currently governs guardianships of the person, estate, or both of minors, as well as incompetent or spendthrift adults. Unlike certain, specialized minor guardianships under ch. 48, Stats., minor guardianships under ch. 54, Stats., do not require involvement by the child welfare system and, therefore, are informally referred to as "private" guardianships.

Under current law, a guardian of a minor's person has the authority to exercise care, custody, and control over the minor. The court may appoint either a temporary guardian, for a duration up to 60 days and one additional 60-day period, or a permanent guardian, with the appointment terminating only upon the occurrence of certain events specified by statute and case law.

Chapter 54, Stats., focuses primarily on incompetent and spendthrift adults, rendering many of the chapter's provisions inapplicable to minors. Current statutory law does not address certain issues relevant to minor guardianships, such as emergency situations and parental visitation. Those involved with guardianships under ch. 54, Stats., including litigants and legal professionals, have expressed concern that ch. 54, Stats., is largely unworkable in the context of minor guardianships, in light of several inapplicable statutory provisions and the existence of relevant case law not codified in statute, among other concerns.

In response, the Joint Legislative Council directed the Study Committee on Minor Guardianships to examine ch. 54, Stats., concerning guardianship of minors and adults, and recommend legislation that creates procedures specific to guardianship of a minor. The committee charge instructed the committee to consider whether any new provisions should apply to guardianship of a minor's person, estate, or both.

#### **Description**

Generally, the bill creates a new process and standards for appointment of a guardian of a minor's person. Key provisions of the bill are summarized below.

##### *Jurisdiction*

The bill removes guardianships of a minor's person from ch. 54, Stats., and creates a new statute governing guardianships of a child's person in a new subchapter under ch. 48, Stats. This

change transfers jurisdiction over private guardianships from the probate court under ch. 54, Stats., to the children's court under ch. 48, Stats. Under the bill, guardianships of a child's estate remain governed by ch. 54, Stats., but may be consolidated with actions under the new procedure.

The bill does not change the process or standard for appointment of other types of guardians as specified under ch. 48, Stats. The bill also specifies that a petition filed under the new statute may not seek to change preexisting orders entered in certain actions under chs. 48 and 938, Stats. If any such actions are pending, the bill requires the court to stay any subsequent proceedings under the new statute until the pending action is resolved, subject to certain exceptions. In addition, the bill prohibits a dispositional order under the new statute from changing the placement of a child under the supervision of a court in certain types of actions.

### *Types of Guardianship*

The bill creates four types of guardianships of a child's person: full; limited; temporary; and emergency. The bill clarifies that a parent retains all rights and duties that are not assigned to the guardian or otherwise limited by statute or court order. For each type of guardian, the bill provides the following standards for and duties upon appointment:

- A full guardianship requires a finding that the child's parents are unfit, unwilling, or unable to provide for the care, custody, and control of the child or other compelling facts and circumstances demonstrate that a full guardianship is necessary. Once appointed, the bill grants a full guardian the duties and authority granted to other guardians under ch. 48, Stats., as well as the following: the authority, subject to a court order, to determine reasonable visitation with the child; the right to change the child's residence from this state to another state; and the duty to report to the court immediately regarding any address changes and annually regarding the child's condition.
- A limited guardianship requires a finding that the child's parents need assistance in providing for the care, custody, and control of the child. The court must specify the limited guardian's duties and authority, and may limit such authority to allow a parent to retain certain decision-making powers. If in the child's best interest, the court may also allow shared physical custody among the limited guardian and the parent.
- A temporary guardianship requires a finding that 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 the appointment of a temporary guardian. A temporary guardian may be appointed for a period not to exceed 180 days, though the court may grant one additional 180-day period for good cause shown. In its order, the court must limit the temporary guardian's authority to those acts that are reasonably related to the reasons for the appointment.
- An emergency guardianship requires a finding that the child's welfare requires the immediate appointment of an emergency guardian. The court may appoint an emergency guardian for a period not to exceed 60 days and must limit the emergency guardian's authority to those acts reasonably related to the reasons for the appointment.



### *Procedure for Full, Limited, and Temporary Guardianships*

Under the bill, any person, including a child 12 years of age or older, may petition for the appointment of a guardian for a child. The petition must contain certain information including the type of guardianship sought, the facts and circumstances establishing that a guardianship is needed, the name and address of a proposed guardian, and other information as specified in the bill. A parent or a child 12 years or older may also nominate a guardian under the bill. Under the bill, the court must appoint the person nominated as the guardian by the parent, unless the court finds that appointment of the person nominated is not in the child's best interest.

The bill requires that an initial hearing be held within 45 days after a petition is filed. At least 96 hours before the initial hearing, the proposed guardian must submit a report to the court detailing his or her existing parental, guardianship, or custodial responsibilities and financial situation, and explaining whether he or she is charged with or has been convicted of a crime or child abuse or neglect. Any interested person, as defined in the bill, may become a party to the hearing.

At the initial hearing, the court must first determine whether any party wishes to contest the petition. If the petition is not contested, the court must immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested and all parties consent, the court may proceed immediately to a fact-finding and dispositional hearing. If any party does not consent or if an adjournment is requested, the court must set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing.

At the fact-finding and dispositional hearing, any party may present evidence, including expert testimony, and argument relating to the allegations in the petition. The court must determine whether the petitioner has proven the allegations in the petition by clear and convincing evidence and must immediately proceed to determine the appropriate disposition.

The bill requires the court to consider all of the following factors in determining the appropriate disposition: (1) any nomination of a guardian made by a parent or the child, if 12 years of age or older, and the opinions of the parents and child as to what is in the child's best interests; (2) whether the proposed guardian would be fit, willing, and able to serve as the child's guardian; (3) if the child is an Indian child, the order of placement preference required for an Indian child in an Indian child custody proceeding, unless the court finds good cause for departing from that order; and (4) whether appointment of the proposed guardian is in the child's best interests.

### *Procedure for Emergency Guardianships*

Under the bill, any person may petition for the appointment of an emergency guardian for a child. The petition must contain the same information required for a full, limited, or temporary guardianship, and must specify the reasons for the appointment of and the powers requested for an emergency guardian.

The bill requires the court to hold a hearing on an emergency petition as soon as possible after the filing of the petition or, for good cause shown, the court may issue a temporary order appointing an emergency guardian without a hearing, which remains in effect until a hearing is held.

Any person who receives notice of the emergency guardianship petition under the bill has a right to a hearing for reconsideration or modification of an emergency guardianship.

#### *Role of the GAL*

Generally, the bill requires appointment of a GAL in proceedings to appoint a guardian or terminate a guardianship, as well as in proceedings to modify a guardianship, if a hearing will be held.

The GAL represents the best interests of the child throughout the proceedings but must apply in all court proceedings the applicable standard specified in the bill. In addition to certain specific duties and responsibilities required of a GAL under ch. 48, Stats., the GAL must conduct a diligent investigation sufficient to represent the best interests of the child in court. As appropriate to the circumstances, this investigation may include, personally or through a trained designee, meeting with or observing the child, meeting with any proposed guardian, meeting with interested persons, and visiting the homes of the child and the proposed guardian.

The GAL is required to attend all court proceedings relating to the guardianship, present evidence concerning the best interest of the child, if necessary, and make clear and specific recommendations to the court at every stage of the proceedings. Further, the bill requires the GAL to inspect certain reports and records relating to the child and, upon presentation of necessary releases, the child's family and the proposed guardian. The court must order custodians of the specified reports or records to permit inspection and copying of such reports or records by the GAL.

#### *Post-Appointment Matters*

The bill allows a court, on its own motion or upon the petition of any interested person, to appoint a successor guardian after a guardian has died, been removed, or resigned, or as a part of the original appointment or any time after, even while the current guardianship is still in place.

Under the bill, if the guardian abuses or neglects the child or knowingly permits others to do so, fails to disclose information that would have prevented his or her appointment as guardian, fails to follow or comply with the court's order, or otherwise fails to perform any of his or her duties as guardian, the court may exercise its continuing jurisdiction to impose certain remedies, including removal of the guardian and appointment of a successor guardian, modification of the duties and authority of the guardian, or entry of an order that may be necessary or appropriate to compel the guardian to carry out the guardian's duties. The court may also require the guardian to pay any costs of the proceeding if the guardian's conduct was egregious. The bill requires the court to hold a hearing on a petition for the review of the conduct of a guardian within 30 days of the filing of the petition.

The bill authorizes a court to modify a guardianship order, if the court finds that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed modification is in the child's best interests.

Under the bill, a guardianship continues until the child attains the age of 18 years unless: (1) the guardianship is for a lesser period of time and that time has expired; (2) the child marries; (3) the child dies; (4) the child's residence changes from this state to another state and a guardian is appointed in the new state of residence; (5) the guardian dies, or resigns and the resignation is

approved by the court, and a successor guardian is not appointed; (6) the guardian is removed for cause and a successor guardian is not appointed; (7) the guardianship is terminated on the request of a parent or the child; or (8) the court terminates the guardianship upon the adoption of the child.

The bill also allows a parent or child to petition for termination of a guardianship. Specifically, the court must terminate the guardianship if it finds that the petitioner has shown by a preponderance of the evidence that a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is fit, willing, and able to carry out the duties of a guardian or that no compelling facts or circumstances exist demonstrating that a guardianship is necessary, and that termination of the guardianship would be in the best interests of the child.



## STUDY COMMITTEE VOTE

On November 29, 2018, the study committee voted to recommend the following bill draft to the Joint Legislative Council for introduction in the 2019-20 session of the Legislature. The vote on the bill draft was as follows:

- LRB-0241/2, relating to guardianships of children, was approved by a vote of Ayes, 10 (Reps. Steineke, Kolste, and Tittl; Sen. Johnson; and Public Members Conwell, DeVore, Plum, Roetter, Rosborough, and Viney); Noes; 0; and Absent, 1 (Public Member Schneider).



**JOINT LEGISLATIVE COUNCIL**

[s. 13.81, Stats.]

<b><u>SENATE MEMBERS</u></b>	<b><u>ASSEMBLY MEMBERS</u></b>
<b>Roger Roth, Co-Chair</b> Senate President Appleton	<b>Robert Brooks, Co-Chair</b> Assistant Majority Leader Saukville
<b>Alberta Darling</b> JFC Co-Chair River Hills	<b>Tyler August</b> Speaker Pro Tempore Lake Geneva
<b>Scott Fitzgerald</b> Majority Leader Juneau	<b>Joan Ballweg</b> Markesan
<b>Howard Marklein</b> President Pro Tempore Spring Green	<b>Peter Barca</b> Kenosha
<b>Mark Miller</b> Monona	<b>Dianne Hesselbein</b> Assistant Minority Leader Middleton
<b>Terry Moulton</b> Chippewa Falls	<b>Gordon Hintz</b> Minority Leader Oshkosh
<b>Jerry Petrowski</b> Marathon	<b>John Nygren</b> JFC Co-Chair Marinette
<b>Fred A. Risser</b> Madison	<b>John Spiros</b> Marshfield
<b>Jennifer Shilling</b> Minority Leader La Crosse	<b>Jim Steineke</b> Majority Leader Kaukauna
<b>Lena Taylor</b> JFC Ranking Minority Member Milwaukee	<b>Chris Taylor</b> JFC Ranking Minority Member Madison
<b>Van Wanggaard</b> Racine	<b>Robin Vos</b> Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 senators and 5 representatives appointed as are members of standing committees.





## STUDY COMMITTEE ON MINOR GUARDIANSHIPS

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**STUDY ASSIGNMENT:** The Study Committee is directed to examine ch. 54, Stats., concerning guardianship of minors and adults, and recommend legislation that creates procedures specific to guardianship of a minor. The committee may consider whether any new provisions should apply to guardianship of a minor's person, estate, or both.

**11 MEMBERS:** 3 Representatives; 1 Senator; and 7 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Steven McCarthy and Amber Otis, Staff Attorneys; and Kelly Mautz, Support Staff.



## COMMITTEE MATERIALS LIST

[Copies of documents are available at [www.legis.wisconsin.gov/lc](http://www.legis.wisconsin.gov/lc)]

### July 24, 2018 Meeting

- Staff Brief 2018-01, *Study Committee on Minor Guardianships* (July 16, 2018)
- LRB-0921/P5, relating to guardianships of children
- State Bar of Wisconsin, Children & the Law Section, *Guardianships of Children (2011 SB 560)* (April 17, 2012)
- Article, *An Intro to Minor Guardianship Actions*, Gretchen Viney, Wisconsin Lawyer, State Bar of Wisconsin (September 2014)
- Presentation, Relating to Guardianships of Children-LRB-0921/P5, by Attorneys Henry Plum and Theresa Roetter (July 24, 2018)
- Handout, (proposed) Types of Guardianships [LRB-0921/P5]

### August 28, 2018 Meeting

- LC Study Committee Memorandum, *Information in Response to Members' Requests at Meeting on July 24, 2018* (August 21, 2018)
- Attachment to LC Study Committee Memorandum
- Handout, Kids Matter, Inc., County Guardianship Graphics (August 24, 2018)
- LC Study Committee Memorandum *Potential Discussion Points for August 28, 2018 Meeting* (August 24, 2018)
- Wisconsin Judicial Committee on Child Welfare, Notes from July 13, 2016 Meeting
- Memorandum, *Minor Guardianship Legislation*, from Randy Keys, Chief Legal Counsel, and Therese Durkin, Legal Counsel, Department of Children and Families (August 28, 2018)
- Follow-Up Data submitted by the Wisconsin State Courts

### October 23, 2018 Meeting

- LRB-0241/P4, relating to guardianships of children.

- LC Study Committee Memorandum, *Description of LRB-0421/P4, Relating to Guardianships of Children* (October 16, 2018)
- LC Study Committee Memorandum, *Topics for Committee Discussion* (October 16, 2018)

**November 29, 2018 Meeting**

- LRB-0241/1, relating to guardianships of children
- Proposed amendment to LRB-0241/1 from Public Member Viney