



# WISCONSIN GUARDIANSHIP PROCESS

## *Frequently Asked Questions*

**Part of 2 of 3: Resources for**  
*Guardianship of a Minor in Wisconsin*

developed for you by

**KIDS MATTER INC.**



You know guardianship is the right option but have a few questions. How long will it take to get guardianship? What forms do you need to fill out? Will you need an attorney?

Wisconsin's current guardianship law Wis. Stat. § 48.9795 went into effect August 1, 2020. It made changes to the guardianship process. By learning more about the process, you can take all the necessary steps to become a child's guardian.

For a chart illustrating the guardianship process, see "Guardianship Legal Process." If you're wondering whether guardianship is right for you and the child you are taking care of, please read "Types of Guardianships FAQ."

### ***Who can become a minor child's guardian?***

Any adult can petition to be a minor child's guardian. A guardian does not need to be a relative. Relatives of the child, however, may be eligible for financial assistance.

A child 12 years old and over may petition for a guardian. For example, a child might petition for a guardian if their parent is unable or refuses to consent to necessary therapy or medical services.

### ***What does it mean to "petition" to become a child's guardian?***

When you want to become a minor child's guardian, you must fill out several forms including a petition. This is essentially an application telling the court you would like to become the child's guardian.

### ***How can I become a child's guardian?***

The process of becoming a minor child's guardian involves filing papers in court, giving notice of the hearing to the parents and other interested persons, and attending court hearings to form the legal relationship.

The process includes:

1. Complete required forms.
2. Pay any costs needed to file the forms, or request a fee waiver, if eligible or wanted.
3. Notify the parents and anyone else who may have legal interests.
4. Provide a statement to the court.
5. Attend the court hearings.

## ***Do I need an attorney to become a child's guardian?***

No, the court does not require you to have an attorney and you can represent yourself. However, guardianship must always be established by a court so you will have to represent yourself in front of the court. It is very important to fill out all the forms correctly and follow all court instructions very closely. Depending on the situation and whether the parents disagree with the guardianship, attorney representation may help your case.

## ***Will the parents have attorneys?***

Parents may or may not have attorneys for the guardianship hearings. The court usually does not appoint attorneys for them.

## ***What forms do I need to complete to become a minor child's guardian?***

You must complete the following forms to file for guardianship:

- ▶ **Petition for Appointment of Guardian** (Full/Limited/Temporary/Emergency Guardianship) (Form JN-1501)
  - ▶ *If the child is Native American, use Form IW-1501*
- ▶ **Notice of Hearing** (Form JD-1724)
  - ▶ *If the child is Native American, use Form IW-1724*
- ▶ **Statement by Proposed Guardian** (Form JN-1514)
- ▶ **Uniform Child Custody Jurisdiction and Enforcement Affidavit** (Form GF-150)
- ▶ **Order Appointing Guardian ad Litem or Attorney** (Form JD-1798A). Some counties require the petitioner to complete this form—check with your clerk's office.

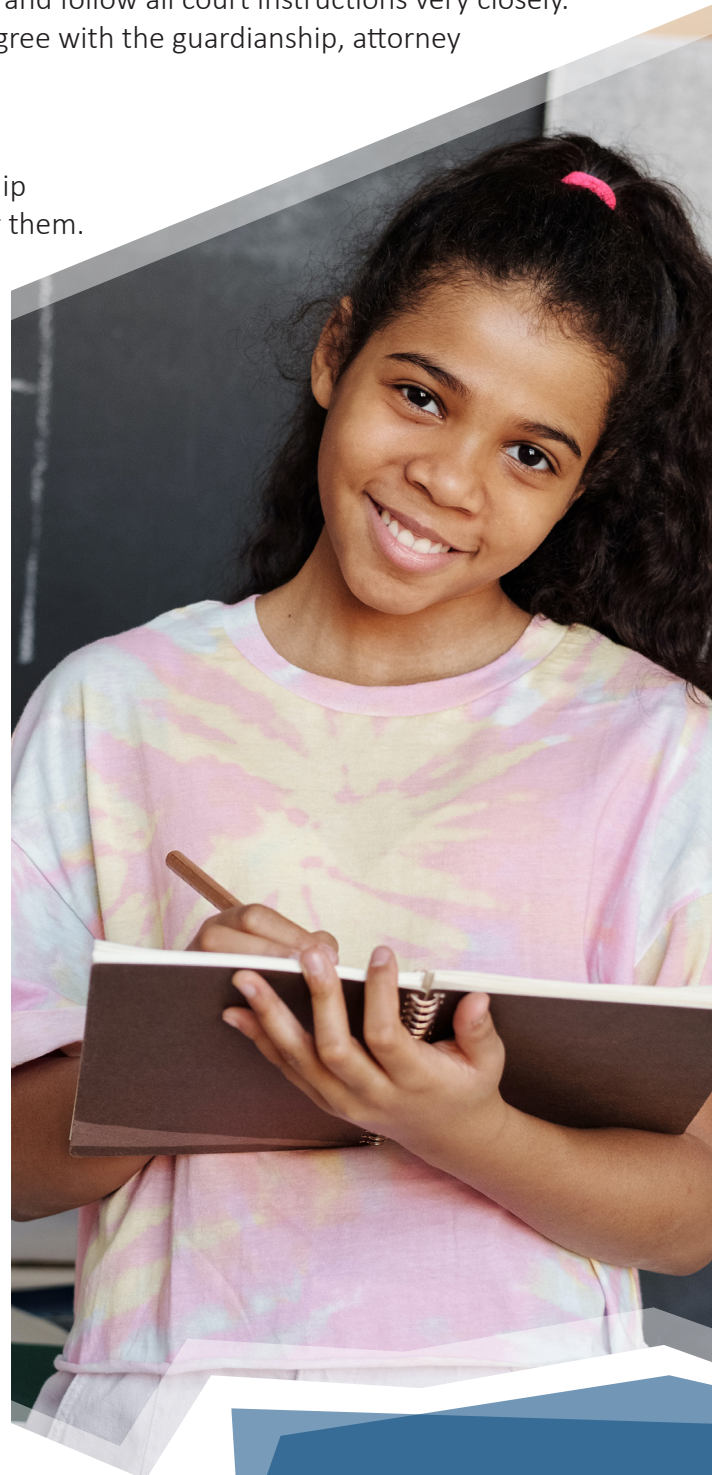
*Some counties may also have additional county specific forms—check with your county clerk's office.*

## ***Does the Indian Child Welfare Act (ICWA) apply and are there specific forms?***

ICWA provisions apply if the child is Native American. In order to preserve cultural connection, Native American children who are members or eligible to be members of a federally recognized tribe are protected under ICWA. Use Form IW-1501 instead of Form JN-1501. Use Form IW-1724 instead of Form JD-1724. For more information on ICWA, visit [www.kidsmatterinc.org](http://www.kidsmatterinc.org).

## ***Once I complete the forms, where do I file them?***

The forms are filed with the clerk's office in the county where the child resides, is physically present or where you, as the petitioner, propose the child reside. Sometimes it can be difficult to determine where to file if the child or parent has lived in multiple states or counties. Ask for help if the child or parent has lived in multiple states or counties, or if child protective services has been involved in a different state or county.



## **BEWARE!**

Jurisdiction can be difficult. If your situation is complicated, *consult an attorney.*



### ***What is the Statement by Proposed Guardian and when must it be filed?***

The Statement by Proposed Guardian provides background information about you as the proposed guardian. The Statement helps determine whether you are fit, willing, and able to serve as the guardian of the child and whether appointment is in the child's best interest. It includes information about the number of people you are responsible for, financial information, and past criminal and child protective services history. The Statement by Proposed Guardian must be in writing, sworn and notarized (Form JN-1514). It must be filed at least 96 hours before the initial hearing.

### ***Is the process the same for the four types of guardianship?***

The process is the same for temporary, limited and full guardianship. The notice and service requirements differ for emergency guardianship and the timeframe also differs for emergency guardianship (see Page 4). Read "Types of Guardianships FAQ" for more information about each type of guardianship.

### ***What information do I need to put in the guardianship petition?***

Information about you, the child, other interested people and the circumstances regarding the guardianship is required.

- ▶ **Name, birth date, and address of the child**
- ▶ **Names and addresses of**
  - ▶ yourself
  - ▶ the child's parents
  - ▶ current guardian
  - ▶ legal custodian
  - ▶ any proposed guardians
  - ▶ any other interested people
- ▶ **The type of guardianship requested** (emergency, temporary, limited or full)
- ▶ **Facts and circumstances showing why you need the type of guardianship you requested and what duties and rights you need.** For example, if you are only looking for the ability to consent for medical and educational decisions, state that in the petition.
- ▶ **Facts and circumstances showing that you are able and willing to be the child's guardian**
- ▶ **Any information regarding other legal proceedings pertaining to the child**
- ▶ If the child is Native American, **information about the child's Native American heritage and tribal affiliation**

### ***What is a "guardian ad litem" (GAL)?***

A guardian ad litem (GAL) is an attorney who participates in the court proceedings to represent the best interests of the child. The court will appoint an attorney to be the child's GAL. The GAL is not required to represent the child's own wishes and opinions. If the child is age 12 or over and their wishes substantially conflict with what the GAL recommends is in their best interest, the court may appoint an attorney to represent what the child wants. The GAL is appointed at the time the petition is filed. The GAL will contact you before the hearing to speak with you and meet with the child in your home.

Ask your county clerk's office if there is a fee for GALs in your county. As a petitioner, you may be responsible for GAL fees. If you are low-income or receive public benefits, you may be eligible for a fee waiver.



## ***After I file, who do I need to notify about the hearing regarding my petition for guardianship?***

There are several interested people that must be notified of the hearing for your petition. These include:

- ▶ The child if age 12 or over
- ▶ The child's parents
- ▶ The child's guardian ad litem and/or counsel if any
- ▶ Current guardian
- ▶ Legal custodian
- ▶ Physical custodian
- ▶ Any possible fathers
- ▶ Anyone nominated to be guardian
- ▶ Any fiduciary if no living parent
- ▶ The county department and/or officials if the child is receiving public benefits
- ▶ The child's tribe if the child is Native American
- ▶ Any other people required by the court

## ***How do I notify interested people of the hearing regarding my petition for guardianship?***

You must make diligent efforts to provide service to parents and other interested people. For **full, temporary** and **limited** guardianship, you must notify interested people of the time and place of the hearing by written notice with a copy of the petition attached at least 7 days before the hearing. This notice must be delivered by personal service or by certified mail to the last known address. Personal service is the preferred method since then there is no question that the interested person received the notice.

If the child is Native American, the notice requirements differ. No hearing may be held until at least 10 days after receipt of the notice by the Indian child's parent, Indian custodian and Indian tribe or, if the identity or location of the Indian child's parent, Indian custodian or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. Secretary of the Interior. On request of the Indian child's parent, Indian custodian or Indian tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

With **emergency guardianship**, the notice must be served as soon as possible by the most practical means possible, including personal service or service by electronic mail or telephone.

### **BEWARE!**

You must make diligent efforts to find the parents, including alleged fathers. Can you reach them on social media? Are they receiving public benefits? Does another relative know where the parents are?

## ***What if I'm trying to get guardianship but I don't know who is the father of the child?***

If you are not sure who the father of the child is, provide notice to any possible fathers. You need to ask the child's mother any information she has about the father. If any possible fathers are unknown, state this on the petition.

## ***What if I'm trying to get guardianship but I can't find the child's parents?***

You must make diligent efforts to find the parents. If the parents are not in contact with you, another relative may still be in contact—talk to them. The court expects you to make every effort to contact the parent because rights to their children are paramount. After diligent efforts, if you are unsure of where the child's parents are, send the notice to their last known address.

### ***Who can serve the notice?***

Personal service means handing a copy of the notice and petition directly to the parents and other interested people. You (the petitioner) cannot personally serve the notice since you are a party to the proceeding. However, another relative or friend, process server or sheriff's office can personally serve the notice. You can be the one to send the notice by certified mail to the last known address. Make sure to keep the certified mail receipt.

### ***Do I need to show proof that the notice of the hearing was given?***

Yes. The individual who personally served or sent notice by certified mail must complete an Affidavit of Service (Form JD-1825). If you, as the petitioner, sent the notice by certified mail, you must complete the Affidavit of Service. The Affidavit of Service needs to be notarized and should be filed with the court prior to your guardianship hearing. If the notice was sent by certified mail, make sure to attach the certified mail receipt to the Affidavit of Service.

### ***If the parents agree to the guardianship, is there any paperwork they need to sign?***

Yes. If the parents agree to you becoming the guardian of their child they can complete a Nomination form (Form JN-1510), nominating you as guardian. The court shall appoint the person nominated as guardian unless the court finds that the appointment of that person is not in the child's best interest.

### ***Do children have a say in who becomes their guardian?***

Children age 12 or over may nominate a guardian (Form JN-1510). The court takes the nomination into consideration in determining if the guardianship is in the child's best interest. The child will be interviewed by the GAL and can share their wishes with the GAL.

### ***Is there a time frame for completing the guardianship process?***

After filing the petition, if requesting a **temporary, limited** or **full** guardianship, the initial hearing must be within 45 days of filing. If the guardianship is contested, there will be another hearing called the fact-finding and dispositional hearing. This hearing must be scheduled within 30 days of the initial hearing.

With an **emergency guardianship**, the hearing will be held as soon as possible but the court may also enter a temporary order without a hearing if the emergency is time-sensitive. The temporary order will remain in effect until another hearing is held.

### ***What is the fact-finding hearing? What do I need to prove to the court at this hearing if the parents do not agree with the guardianship?***

At the fact-finding hearing you will present evidence to prove the allegations in your petition. What you need to prove depends on the type of guardianship requested.

- ▶ **Emergency Guardianship** – the facts and circumstances showing that the welfare of the child requires the immediate appointment of an emergency guardian.
- ▶ **Temporary Guardianship** – the facts and circumstances establishing that the child's situation, including the inability of the child's parents to provide for the care, custody and control for the temporary period of time, requires the appointment of a temporary guardian.
- ▶ **Limited Guardianship** – the facts and circumstances establishing that the child's parents need assistance in providing for the care, custody and control of the child.
- ▶ **Full Guardianship** – the facts and circumstances establishing 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 demonstrating that a full guardianship is necessary.



### ***What is the dispositional hearing and what factors does the court consider?***

After the fact-finding hearing, if the court determines that there was enough evidence to prove the allegations, then the court moves to the second phase known as the dispositional hearing. At this hearing, the court decides the appropriate disposition (outcome) for the case. The court takes into consideration:

- ▶ Any nominations made by the parent or child.
- ▶ Whether the proposed guardian would be fit, willing and able to serve as the child's guardian.
- ▶ Whether the appointment is in the child's best interest.

### ***What if I am appointed guardian and something happens to me?***

If something happens to you where you could no longer care for the child, the court may appoint a back-up guardian, known as a successor guardian. The successor guardian would have the same rights and duties you had as guardian. This would terminate your rights and duties as guardian. It is best to name a successor guardian when you file for guardianship so there is already a plan in place.

For information on visitation, changing or ending the guardianship and your duties after you are appointed guardian, read "Post-Guardianship Questions and Court Proceedings."

This is general information about Wisconsin law and/or procedure and is not intended to serve as legal advice. Every situation is unique. General information is not a substitute for legal counsel. Individuals needing legal advice or legal assistance should consult an attorney.

Find additional information in parts 1 and 3 of the Kids Matter Inc. series *Resources for Guardianship of a Minor in Wisconsin*.

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Learn more at  
**[www.kidsmatterinc.org](http://www.kidsmatterinc.org)**

