

Washington Guardianship and Conservatorship and Other Protective Arrangements Act

RCW 11.130

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Current Legislative Intent

- It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian.
- **However**, their liberty and autonomy should be restricted through guardianship, conservatorship, emergency guardianship, emergency conservatorship, and other protective arrangements only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.
- Presumption of legal capacity for an adult. RCW 11.130.037

Sections of RCW 11.130

- Article 1 – General Provisions
- Article 2 – Guardianship of Minor
- **Article 3 – Guardianship of Adult**
- Article 4 – Conservatorship (Minor and Adult)
- Article 5 – Other Protective Arrangements
- Article 6 – Forms
- Article 7 –
 - A. Certified Professional Guardianship Board of Resolution Grievances
 - B. Supported Decision-Making Agreements
- Article 8 – Miscellaneous Provisions

Article 1 -----Venue - Adult

- (2) Venue for a **guardianship proceeding** or protective arrangement instead of guardianship for an adult is in:
 - (a) The county in which the respondent resides;
 - (b) If the respondent has been admitted to an institution by court order, the county in which the court is located; or
 - (c) If the proceeding is for appointment of an emergency guardian for an adult, the county in which the respondent is present.
- (3) Venue for a **conservatorship proceeding** or protective arrangement instead of conservatorship is in:
 - (a) The county in which the respondent resides, whether or not a guardian has been appointed in another county or other jurisdiction; or
 - (b) If the respondent does not reside in this state, in any county in which property of the respondent is located.
- (4) If proceedings under this chapter are brought in more than one county, the court of the county in which the first proceeding is brought has the exclusive right to proceed unless the court determines venue is properly in another court or the interest of justice otherwise requires transfer of the proceeding.

Who can Petition?

- (1) A person interested in an adult's welfare, *including* the adult for whom the order is sought, may petition for appointment of a guardian for the adult.

Notice of Hearing

- 14 days before hearing
- Proof of Notice of a hearing made before or at the hearing and filed in proceeding
- 16 point font in plain language and to the extent feasible in a language in which the person to be notified is proficient.
- A person may waive notice in writing signed by the person or persons attorney and filed in the proceeding
- A Respondentmay not waive notice under this chapter.

Request for Notice RCW 11.130.080

- (1) A person may file with the court a request for notice ... if the person is:
 - (a) Not otherwise entitled to notice; **and**
 - (b) Interested in the welfare of a respondent, individual subject to guardianship or conservatorship, or individual subject to a protective arrangement under Article 5 of this chapter.
- (2) A request
 - must include a statement showing the interest of the person making the request and the address of the person or an attorney for the person to whom notice is to be given.
- (3) If the court approves a request ...the approved individual shall give notice of the approval to the guardian or conservator, if one has been appointed, or the respondent if no guardian or conservator has been appointed.

RCW 11.130.265 Basis for Adult Gship

On petition and after notice and hearing, the court may find by **clear and convincing evidence** that:

- 1. The respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making;
 - (a) Appointment is necessary to prevent significant risk of harm to the adult respondent's physical health, safety, or self-care; and
 - (b) The respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative; or
 - (c) With appropriate findings, treat the petition as one for a conservatorshipor protective arrangement, issue any appropriate order, or
 - (d) dismiss the proceeding.
- 2. The court may not establish a full guardianship if a limited guardianship, protective arrangement instead of guardianship, or other less restrictive alternative would meet the needs of the respondent.
- 3. A determination by the court that a basis exists is a legal decision, not a medical decision.
- 4. The determination must be based on a **demonstration of management insufficiencies over time** in the area of physical health, safety, or self-care. Age, eccentricity, poverty, or medical diagnosis alone are not sufficient basisto justify a determination that a guardian should be appointed for the respondent.

How a Guardianship Process Gets Started?

- Guardianship Monitoring Program
 - Court Visitor Names and Hearing Dates
- Petition filed in Superior Court Clerk's office
 - Check local rules – no ProTem Commissioner & GMP approval
- Find mandatory forms online at Spokane County Superior Court
 - Hearing within 60 days of that date unless good cause is shown
 - A Court Visitor is appointed.
 - The petition is personally served within 5 days to Respondent and Court Visitor.
- No filing fee if assets less than \$3000.00 or hardship.

Court Visitor duties?

RCW 11.130.280

1. SHALL INTERVIEW: the respondent in person and, in a manner the respondent is best able to understand, petitioner and proposed guardian / conservator
2. EXPLAIN TO RESPONDENT the substance of the petition, the nature, purpose, and effect of the proceeding, the respondent's rights at the hearing on the petition, and the general powers and duties of a guardian;
3. DETERMINE RESPONDENT VIEWS about the appointment sought by the petitioner, including views about a proposed guardian, the guardian's proposed powers and duties, and the scope and duration of the proposed guardianship; and
4. INFORM RESPONDENT that all costs and expenses of the proceeding, including the respondent's attorney's fees, may be paid from the respondent's assets.
5. VISIT RESPONDENT'S PRESENT DWELLING and any dwelling in which it is reasonably believed the respondent will live if the appointment is made and statement whether the proposed dwelling meets the respondent's needs and whether the respondent has expressed a preference as to residence;
6. OBTAIN INFORMATION from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition; and
7. INVESTIGATE the allegations in the petition and any other matter relating to the petition the court directs.

Court Visitor duties?

RCW 11.130.280 continued...

SHALL FILE A REPORT in a record with the court and provide a copy of the report to the respondent, petitioner, and any interested party entitled to notice under RCW 11.130.080 at least fifteen days prior to the hearing on the petition filed, which must include:

- (a) A summary of self-care and independent living tasks the respondent can manage without assistance or with existing supports, could manage with the assistance of appropriate supportive services, technological assistance, or supported decision making, and cannot manage;
- (b) A recommendation regarding the appropriateness of guardianship, including whether a protective arrangement instead of guardianship or other less restrictive alternative for meeting the respondent's needs is available and:
 - (i) If a guardianship is recommended, whether it should be full or limited; and
 - (ii) If a limited guardianship is recommended, the powers to be granted to the guardian;
- (c) A statement regarding:
 - i. qualifications of the proposed guardian and whether the respondent approves or disapproves of the proposed guardian;
 - ii. whether the respondent declined a professional evaluation under RCW 11.130.290 and what other information is available to determine the respondent's needs and abilities without the professional evaluation;
 - iii. whether the respondent is able to attend a hearing at the location court proceedings typically are held;
 - iv. whether the respondent is able to participate in a hearing and which identifies any technology or other form of support that would enhance the respondent's ability to participate; and
- (d) Any other matter the court directs.

The appointment of a court visitor has no effect on the determination of the adult respondent's legal capacity and does not overcome the presumption of legal capacity or full legal and civil rights of the adult respondent.

Order of Priority RCW 11.130.305

the court**shall** consider persons **qualified to be guardian** in the following order of priority:

- (a) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in another jurisdiction;
- (b) A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a power of attorney;
- (c) An agent appointed by the respondent under a power of attorney for health care;
- (d) A spouse or domestic partner of the respondent;
- (e) A relative or other individual who has shown special care and concern for the respondent; and
- (f) A certified professional guardian or conservator.

(2) **If two or more persons** have equal priority ...the court shall select as guardian the person the court considers best qualified. In determining the best qualified person, the court shall consider the person's relationship with the respondent, the person's skills, the expressed wishes of the respondent, the extent to which the person and the respondent have similar values and preferences, and the likelihood the person will be able to perform the duties of a guardian successfully.

(3) The court, acting in the best interest of the respondent, may decline to appoint as guardian a person having priority under subsection (1) of this section and appoint a person having a lower priority or no priority.

(4) A person that provides paid services to the respondent, or an individual who is employed by a person that provides paid services to the respondent or is the spouse, domestic partner, parent, or child of an individual who provides or is employed to provide paid services to the respondent, may not be appointed as guardian unless:

(a) The individual is related to the respondent by blood, marriage, or adoption; **or** (b) The court finds by clear and convincing evidence that the person is the best qualified person available for appointment and the appointment is in the best interest of the respondent.

An owner, operator, or employee of a long-term care facility at which the respondent is receiving care may not be appointed as guardian unless the owner, operator, or employee is related to the respondent by blood, marriage, or adoption.

Attorney for Respondent? 11.130.285

- The respondent **shall have the right** to be represented by a willing attorney of their choosing at any stage in guardianship proceedings.
- Any attorney purporting to represent a respondent or person subject to guardianship **shall petition the court** to be appointed to represent the respondent or person subject to guardianship.
- An attorney representing the respondent in a proceeding for appointment of a guardian for an adult **shall**:
 - (a) Make reasonable efforts to ascertain the respondent's wishes;
 - (b) Advocate for the respondent's wishes to the extent reasonably ascertainable; and
 - (c) If the respondent's wishes are not reasonably ascertainable, advocate for the result that is the least restrictive in type, duration, and scope, consistent with the respondent's interests.

Professional Evaluation RCW 11.130.290

At the time the court appoints a court visitor, the court shall order a professional evaluation of the respondent.

The respondent must be examined by a physicianpsychologist, advanced registered nurse practitioner ...or physician assistant ...selected by the court visitor who is qualified to evaluate the respondent's alleged cognitive and functional abilities and limitations and will not be advantaged or disadvantaged by a decision to grant the petition or otherwise have a conflict of interest.

If the respondent opposes the professional selected by the court visitor, the court visitor shall obtain a professional evaluation from the professional selected by the respondent. The court visitor, after receiving a professional evaluation from the individual selected by the respondent, may obtain a supplemental evaluation from a different professional.

The individual conducting the evaluation shall provide the completed evaluation report to the court visitor within **thirty days of the examination of the respondent (not applicable in conservatorship)**

The court visitor shall file the report in a sealed record with the court. ...the report must contain:

- (a) The professional's name, address, education, and experience;
- (b) A description of the nature, type, and extent of the respondent's cognitive and functional abilities and limitations;
- (c) An evaluation of the respondent's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
- (d) A prognosis for improvement and recommendation for the appropriate treatment, support, or habilitation plan;
- (e) A description of the respondent's current medications, and the effect of the medications on the respondent's cognitive and functional abilities;
- (f) Identification of persons with whom the professional has met or spoken with regarding the respondent; and
- (g) The date of the examination on which the report is based.
- (4) If the respondent **declines to participate** in an evaluation ordered, **the court may proceed with the hearing under RCW 11.130.275 if the court finds that it has sufficient information to determine the respondent's needs and abilities without the professional evaluation.**

Other Common Outcomes

- The Court Visitor may recommend a less restrictive alternative
- The Court Visitor may recommend a full guardianship as a back-up to another protective measure
- The Court Visitor may not recommend guardianship
- A Court Visitor or Attorney for the AIP may propose another protective measure
- Mediation
- Trial

A Guardian or Conservator – who is that?

- Two Types of Guardians or Conservators: *Lay or Certified Professional* Superior Court is the “Master Guardian”
- Spokane County Guardianship Monitoring Program
 - <http://www.courts.wa.gov/guardianportal/>

LAY	CERTIFIED PROFESSIONAL
Family, friend, acquaintance, professional other than CPG etc	Licensed, bonded and insured
Online Training requirement by law	RCW 11.130.010(26), GR23 and Standards of Practice governed by the Washington State Certified Professional Guardianship Board http://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.cpg&content=rules

How to find out if a guardian is appointed for a client

1. Washington Courts online case search:
<https://odysseyportal.courts.wa.gov/odyportal>
2. Spokane County Superior Court Guardianship Monitoring Program 509-477-2622
3. Idaho is confidential
4. Spokane County Court Viewer for Civil Case Information by Name:
<https://cp.spokanecounty.org/courtdocumentviewer/PublicViewer/SCAllCasesByName.aspx?ct=nc>

THE END
QUESTIONS?