

Uniform Guardianship,
Conservatorship, and Other Protective
Arrangements Act

Article II: Guardianship of Minor

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Statutory History

- Replaced former RCW 26.10
- Effective January 1, 2021
- Primarily intended to protect the liberty and autonomy of minors
- It was NOT written as a custody or family law statute
- Does not necessarily reflect the nuances of family law
- Case law prior to 2021 MUST be consulted with caution

Types of Guardianships

- “Regular” Minor Guardianships
- Emergency Minor Guardianships
- Standby Minor Guardianships

Emergency Minor Guardianship

- Basis: The appointment will likely prevent substantial harm to the minor's health, safety, or welfare, AND no other person can or will act to prevent the harm.
- Preponderance standard
- May be sought in a pending guardianship matter (preferred) or as a stand alone matter.
- No presumption that a permanent guardianship will be granted
- Not a determination that a basis for a guardianship exists

Standby Minor Guardianship

- Must be commenced by a parent or by a personal nominated as standby guardian in a signed record.
- Not to be confused with a successor guardian or “standby guardian” as used in former RCW 11.88
- Essentially a proactive guardianship
- The process for establishing a Standby Guardian is the same as a “regular” minor guardianship
- Notice requirements are the same
- Parties entitled to notice have 60 days to object
- Standby Guardian does not immediately assume the duties and powers of a guardian

Jurisdiction and Venue

- Actions are filed in the Superior Court
- Child must be domiciled or present in Washington State
- Venue is proper in the county:
 - Where the minor resides or is present at the commencement of the proceeding
 - In which another proceeding concerning the custody of the child or parental rights of the parents is pending
- The Uniform Child-Custody Jurisdiction and Enforcement Act (“UCCJEA”) & the Federal Parental Kidnapping Prevention Act (“PKPA”) apply.

Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)

- Basic Purpose:
 - Avoid jurisdictional competition
 - Promote cooperation among courts
 - Discourage use of the interstate system for continuing custody controversies
 - Deter child abductions
 - Avoid relitigation of custody decisions of other states
 - Facilitate enforcement of the decrees of other states.

UCCJEA and Jurisdiction

- UCCJEA is not, strictly speaking, a statute of subject matter jurisdiction.
- A Washington court may assume jurisdiction over a custody determination only if:
 - WA is the child's home state
 - The child has significant connections to WA
 - There is an emergency
 - There is no other appropriate forum
 - Exclusive continuing jurisdiction

UCCJEA Jurisdiction Relinquishment

- Non-Washington court exercising jurisdiction over a child:
 - Judge in WA must confer with non-Washington Judge
 - Commenced in a hearing setting
 - In Spokane County, the Family Law Department must schedule the hearing
 - Parties do not present oral argument
 - This hearing must occur prior to a WA court issuing a custody order

Basis for Appointment

- RCW 11.130.185
- Must be in the child's best interest AND
 - Parent consents
 - Parent's rights are terminated
 - Clear and Convincing evidence that no parent of the minor is willing or able to perform parenting functions. (Physical care, education, exercising appropriate judgment, financial support etc.)

Procedure

- Superior Court civil rules apply (except as modified by statute)
 - Children may testify
- Rules of evidence apply
- Bench trials only
- Mandatory forms are required *See*
<https://www.courts.wa.gov/forms/?fa=forms.static&staticID=14#minorGuardianship>

Who Can Request a Minor Guardianship

- Any person interested in the welfare of a minor
- This includes the minor themselves

You File Your Petition – What is Next?

- Court's Duties
 - Must schedule a hearing
- Petitioner's Duties
 - Personally serve notice of the hearing, petition and supplemental declarations:

Petitioner's Notice Requirements

Personal Service

- Personal Service:
 - The minor (12+),
 - Each parent, if none, the adult nearest in kinship who can be found with reasonable diligence
 - Any guardian or person with nonparental custody of the minor issued under RCW 26.10
 - Any other person the court determines should receive personal service

Petitioner's Notice Requirement Other Means

- Petitioner shall give notice by mail or other action reasonably calculated to give notice
 - Any adult with primary care and custody of the minor:
 - Each person that had primary care or custody of the minor for
 - at least 60 days during the two years immediately
 - 730 days during the five years immediately before filing the petition
 - Any person nominated as guardian by the minor (12+)
 - Any nominee of a parent
 - Each grandparent and adult sibling
 - Any conservator acting for the minor in any jurisdiction
 - Any other person the court determines

Notice Issues

- The court may not grant a petition for a minor guardianship if a petitioner fails to serve
 - The minor (12+)
 - The parents, unless the parents can't be located, or waive notice.

Appointment of Court Visitor

- If Petitioner cannot serve a minor over the age of 12 the Court must appoint a court Visitor, who shall
 - Interview the petitioner and the child
 - Meet with the minor and explain the rights they have in this proceeding.
 - Court visitor will ascertain the minor's positions and file a report with the court.
 - Ascertain whether the parent can be located
 - Investigate any other matter relating to the petition the court directs
 - Ascertain whether the parent consents to the guardian for the minor.

Appointment of GAL

- If a child is under the age of 12:
 - Court may appoint a Guardian ad Litem
 - GAL must represent to the court the needs and best interest of the minor.

Right to Counsel

- Parents in minor guardianship proceedings have a right to counsel.
 - Indigent AND
 - Objects to the appointment of a guardian OR
 - Needs counsel to obtain informed consent or otherwise needs representation
- Children over the age of 12 have a right to counsel.
 - Must be 12 years or older
 - Request an attorney
 - An attorney is recommended by a GAL
 - Court decides the minor needs an attorney

Spokane County Procedures

- <https://www.spokanecounty.org/1410/Family-Court-Instructions>
- A Petition for Minor Guardianship *must* accompany any type of emergency guardianship request
- An Emergency Minor Guardianship Action and accompanying Minor Guardianship action must be assigned to the same judicial officers
- Parties must provide the family law department with a signed order to release DCYF records

Participate in Hearing

- An interested person may request to participate in a hearing
- A child (12+) may participate in a hearing

The End!
