

Title 11 Minor Guardianship

The content of this chapter is taken from the Administrative Office of the Court's Title 11 Guardianship, Conservatorship, and other Protective Arrangement Benchbookⁱ

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ⁱ Available to Inside Courts users:

<https://inside.courts.wa.gov/content/manuals/jdgbench/guardianship/pdf/Title%2011%20Guardianship%20Benchbook.pdf>.

Basis for a Minor Guardianship - [RCW 11.130.185](#)

- A. After hearing and notice, a court may appoint a guardian for a minor if, by clear and convincing evidence, a guardianship is in the minor's best interest **AND**
 - 1. Each parent of the minor consents and fully understands that consent;
 - 2. All parental rights have been terminated; or
 - 3. No parent of the minor is willing and able to exercise the parenting functions listed in RCW 26.09.004.
- B. A parent has a fundamental right to autonomy in child-rearing decisions, and any state or third-party interference with those decisions are subject to strict scrutiny.¹ Under Ch. 26.10 RCW, parents had a constitutional right to be presumed fit at the time of trial; a non-parent had to prove the parent is unfit.² Presumably, a parent objecting to a guardianship must be presumed willing and able to perform their parenting functions.

Petition for a Minor Guardianship - [RCW 11.130.190](#)

- A. Any person interested in a minor's wellbeing, including the minor, may bring a petition for minor guardianship. The factual reason for a minor guardianship shall be pled in a supplemental declaration. On a showing of good cause, a court may order that the supplement declaration and all subsequently filed pleadings not be served on an unrepresented minor.
- B. The petition needs to contain several pleading factors; please refer to RCW 11.130.090 for a full listing.
- C. Except as otherwise provided by this Chapter, the rules of civil procedure apply to all guardianship proceedings

Service Requirements for Minor Guardianship

Petitions - [RCW 11.130.195](#)

- A. Petitioner shall schedule a hearing when the petition is filed and serve, by filing a notice of a hearing with the date, place, and time of the hearing together with the petition and supplemental declaration.
- B. The people listed in RCW 11.130.195(1)(a) must be personally served or given notice in a manner reasonably calculated to inform them of the proceeding, depending on their relationship with the minor. The court may waive service to any party that does not require personal service for good cause. Good cause includes notifying the party would cause the minor harm.
- C. The notice must include a list of rights including:
 - 1. The right to request an appointment of an attorney for a minor;

2. The right to object to the appointment of a guardian;
3. The consequences of guardianship;
4. The right to attend hearings;
5. The right to participate and communicate with the court;
6. Information on how the minor can respond to the petition; and
7. Indicate if the court has entered an order limiting the information served on the minor and, if so, the minor's right to ask the court to reconsider that order at any time.

Emergency Minor Guardianships - [RCW 11.130.225](#)

- A. The court may grant an emergency guardianship petition for a minor, without notice, if it finds appointment is necessary to prevent substantial harm to the minor's health, safety, and welfare, and no one else has the authority or willingness to act. ("Authority or willingness" is different from the "willing and able" standard used to determine a guardianship in RCW 11.130.185).

The court may act on its own or on the petition of someone interested in the health and welfare of the minor, including the minor, or on the motion of the petitioner in a minor guardianship case filed under RCW 11.130.190.

- B. An emergency guardianship may not exceed 60 days, and the 60-day period may be extended once. The emergency guardians may exercise only those powers contained in the order. However, the court may extend an emergency guardianship until a full hearing is held under RCW 11.130.190 or 11.130.220.

- C. Notice of the emergency guardianship hearing must be given to:

1. A minor age 12 or older
2. Each parent of the minor;
3. An attorney appointed in the case under RCW 11.130.200;
4. Any person having custody or care of the minor; and
5. Any other person the court determines.

If an emergency guardian is appointed without notice, notice must be given to all required parties within 48 hours of the appointment. A hearing must be held within five days

- D. The court may require an emergency guardian to make a report. The court may remove an emergency guardian.
- E. If an emergency guardianship is filed and minor guardianship is pending or filed, the two cases shall be linked or consolidated.

Attorney for Minor or Parent - [RCW 11.130.200](#)

- A. A court may appoint an attorney for the minor child if a child 12 or over requests an attorney, the GAL recommends an attorney be appointed for the child, or the court determines the minor needs representation. A minor may retain an attorney to represent them in a guardianship proceeding.

An attorney appointed for a minor shall make a reasonable effort to ascertain the minor's wishes, advocate for the minor's wishes, and advocate for the minor's legal rights if the minor's wishes are not ascertainable.

- B. The court must appoint an attorney to represent a parent in a minor guardianship proceeding if the parent has appeared, is indigent, and
1. The parent objects to the appointment;
 2. The court determines that counsel is needed to ensure the parent is giving informed consent for appointment of a guardian; or
 3. The court determines the parent needs representation.

The court must inquire about whether a parent is indigent to ensure counsel is appointed in a timely manner. Indigent is defined as receiving public assistance, being voluntarily committed, having an annual income of 125% of the federal poverty level after taxes, or unable to pay the anticipated costs of counsel because their funds are insufficient to retain counsel.³

- C. The court may, but is not required to, appoint an attorney to represent a parent that is not indigent in a minor guardianship proceeding and meets the factors for representation beside indigence.

Minor's and Other Party's Attendance and Participation - [RCW 11.130.205](#)

- A. A minor shall be allowed to attend and participate in the guardianship hearing unless the court determines the minor lacks the maturity to meaningfully participate in the hearing or attendance would be harmful to the minor.
- B. Minors 12 or older are required to be served a guardianship petition and other corresponding papers. However, the facts about why the petitioner is requesting a guardianship are required to be placed on a supplemental declaration. RCW 11.130. 190(2)(e). A court, upon a showing of good cause, may order that the supplemental declaration and all subsequently filed pleadings not be served on an unrepresented minor.⁴
- C. Unless ordered for good cause, the proposed guardian of a minor shall attend the hearing. Any parent of the minor has the right to attend the hearing under RCW 11.130.195.

- D. Any person may request permission from the court to participate in a guardianship hearing. The court should look to the best interest of the minor in determining whether to grant a request. The court may place restrictions on a third parties' participation. The court is not required to hold a hearing when making a third-party participation order.

Order of Appointment of Guardian for Minor - [RCW 11.130.215](#)

- A. After a hearing, the court may appoint a guardian for a minor, dismiss the proceeding, or take other action consistent with Ch. 11.130 RCW.
- B. If the court appoints a guardian, the following rules apply to priority of appointment:
 - 1. The court shall appoint an individual nominated by the minor's parents as guardian unless the court finds that the appointment of the individual nominated by the minor's parents is not in the minor's best interest;
 - 2. If the parents have nominated different people as guardian, the court shall appoint the nominee that is in the best interest of the minor, unless the court finds the appointment of none of the nominees is in the minor's best interest;
 - 3. Next, the court shall appoint a person nominated by a minor that is twelve or older, unless the court finds that appointment is not in the minor's best interest;
 - 4. If no appointed nominee is in the minor's best interest, the court shall appoint an individual that is in the minor's best interest.
- C. The order appointing guardian must clearly state which rights related to the minor's care are retained by any parent and set out a visitation schedule for parents, unless a parent's visitation is limited or restricted under RCW 26.09.191.
- D. The order must clearly tell parents that they are entitled to notice when the guardian delegates custody of the minor; or the court has modified or limited the powers of the guardian. The order must clearly identify all parties entitled to notice of events and must order the clerk to issue letters of guardianship.

Guardian's Duties - [RCW 11.130.230](#)

- A. A guardian for a minor is a fiduciary and must act in the minor's best interest and exercise reasonable care, diligence, and prudence. Unless otherwise limited by court order, the guardian has the duties and responsibilities of a parent regarding the minor's support, care, education, health, safety, and welfare.
- B. The guardian must be personally acquainted with the minor and maintain sufficient contact to know the minor's abilities, needs, opportunities, and physical

and mental health. The guardian must take reasonable care of the minor's property and bring a conservatorship action if necessary to protect the minor's property. When making decisions for the minor, the guardian must act in the minor's best interest but must also consider the minor's preferences. The guardian must keep the court informed about changes in the minor's dwelling. Any move out of the school district is subject to the relocation proceeding of RCW 26.09.405 through RCW 26.09.560 and court approval.⁵

- C. The court or an individual interested in the minor's welfare may require the minor's guardian to report to the court about the minor's condition and any of the minor's property subject the guardian's control.

Powers of a Guardian for a Minor

- A. Except as limited by the court, a guardian has the power of a parent. The guardian has the power to:
1. Make decisions regarding the minor's support, care, education, health, safety, and welfare;
 2. Take custody of the minor;
 3. Receive funds and benefits payable for the support of a minor or start a child support proceeding to compel another person to pay support on behalf of the minor's care;
 4. Authorize the adoption of the minor if all parental rights have been terminated or the minor's parents are deceased.

Termination or Modification of Guardianships for Minors - [RCW 11.130.240](#)

- A. A guardianship for a minor terminates when:
1. The minor turns 18;
 2. Dies;
 3. Is adopted;
 4. Is emancipated; or
 5. The basis for appointment of a guardian under 11.130.185 is no longer satisfied. If the guardianship is being terminated because a parent is now willing and able to perform their parenting functions, the court must balance whether ending the guardianship would be harmful to the minor and whether the minor's interest in continuing the guardianship outweighs the parent's interest in the guardianship ending.
 6. Any person interested in the health and welfare of a minor, including the minor or the minor's parent, may move to modify or terminate the minor

guardianship. The petitioner shall give notice to all notice parties and the minor, if the minor is age 12 or older at the time of the modification.⁶

- B. When terminating a guardianship, the court may issue a transitional order that will assist the minor with transition of custody, provided the transition is in the best interest of the minor.
- C. The case law generated under Ch. 26.10 RCW shines some light on the parent's interest in parenting their children. The court must find there will be actual detriment to the minor to place the child with a non-parent.⁷ Only extraordinary circumstances meet the actual detriment standard. A chance of detriment to the child is not enough to overcome parental rights.⁸ A strong and deep bond between the child and the non-parent caregiver does not meet the actual detriment standard.⁹ Specific facts showing specific significant special needs that could not be met by the parents are required to establish actual detriment; this is "a highly fact-specific inquiry."¹⁰
- D. If a successor guardian needs to be appointed, the court shall follow the priorities in RCW 11.130.215 to determine who the successor guardian will be. After a successor guardian is appointed, notice must be given. See notice requirements in section RCW 11.130.195.

Standby Guardian for Minor - [RCW 11.130.220](#)

- A. A standby guardian may be appointed under this section and may act as a guardian when no parent of the minor is willing and able to exercise the duties and powers granted to the guardian. A parent nominates the standby guardian in a signed record. The parent may also set the desired limitations on the powers of the guardian in this record.
- B. The court may appoint the standby guardian on the petition of the parent or the nominated standby guardian and a finding that, within two years of appointment, no parent of the minor will be able or willing to perform the parenting functions listed in RCW 26.09.004(2). The guardianship does not begin when the standby guardianship is ordered but upon the filing of an Acceptance of Appointment.

A petition for standby guardian must contain the same information as a petition for guardianship of a minor.
- C. Upon filing a Standby Guardian Petition, the petitioner must serve a minor 12 or older, each parent of the minor, the person nominated as standby guardian, and any other person the court determines. Each party entitled to service must receive a statement of the rights to request appointment of an attorney for the minor, the right to object to appointment of the standby guardian, and a description of the nature, purpose, and consequence of appointment of a standby guardian. The court may not grant a Standby Guardian Petition if service is not achieved for the minor and the parents, unless the court finds, by clear and

convincing evidence, the parent waived the right to notice or could not be located with due diligence.

If the petitioner is unable to serve the parent or alleges the parent waived service, the court must appoint a court visitor to interview the petitioner and the minor, investigate whether the parents can be located with due diligence, and investigate any other matter relating to the petition.

- D. Any person entitled to notice under this section may object to the appointment of a standby guardian within 60 days of service by filing the objection with the court and giving notice of the objection to other parties. If an objection to the appointment of the standby guardian is filed, the court will hold a hearing to determine if a standby guardian should be appointed. If no objection is filed, the court may appoint the standby guardian. Parties may also object at the point the standby guardian assumes his or her duties. The standby guardian must notify the parent, the minor 12 or older, and all notice parties when he assumes the duties of guardian.
- E. If the court finds that appointing a standby guardian is appropriate, it shall appoint the nominee that is in the best interest of the minor, unless none of the nominees are in the best interest of the minor. If the parents have nominated different guardians, the court shall choose the nominee that is in the best interest of the minor.
- F. The parents, and any parties identified in the Order of Guardianship, must be notified when:
 - 1. The standby guardian assumes the duties and powers of the guardian;
 - 2. The guardian delegates custody of the minor;
 - 3. The court modifies or limits the powers of the guardian; and
 - 4. The court removes the guardian.
- G. Before assuming the duties and powers of guardian, a standby guardian must file with the court an acceptance of appointment and give notice of the acceptance to each parent, unless the parent waived or cannot be located; a minor 12 or older; and any other person having custody of the minor. The court shall hold a hearing if there is an objection to the standby guardian assuming their duties and the objection supports a reasonable belief that the conditions for assumptions of duties and powers have not been satisfied.

Application of the Indian Child Welfare Act

- A. Every petition filed needs to allege whether the minors involved in the action are Indian children as defined in RCW 13.38.040(7). Every order and decree shall contain a finding on whether the Indian Child Welfare Act (ICWA) applies. If the ICWA applies, then there are higher notice requirements, placement preferences,

and evidentiary standards. The order appointing a guardian must contain a finding that all notice and evidentiary requirements, as well as placement preferences under the act have been satisfied.¹¹

Additional Information Required for Entering Order

- A. Before granting any order in a minor guardianship, the court must consult the Judicial Information System (JIS) to determine if any information or proceeding exists that are relevant to the placement of the minor involved in the guardianship action.
- B. Before a final order is entered, a court must direct the DCYF to release information provided under RCW 13.50.100 and require the petitioner to provide results for a criminal background check as described in Ch. 43.43 RCW for the petitioner and any other adult's living in the petitioner's household.

Restraining and Protection Orders - [RCW 11.130.257](#)

- A. Under this Chapter, either party may file a temporary restraining order enjoining another party from: molesting or disturbing the peace of the other party or of any child; entering the home of the party; knowingly coming within or knowingly remaining within a specified distance of a specified location; and removing the minor/s from the jurisdiction of the court. A restraining order may be entered without notice to the other party only if, upon reviewing the affidavit of the moving party, the evidence shows that irreparable injury could result if the order is not issued before the time for responding elapsed. A temporary restraining order cannot prejudice the rights of any party or minor at a subsequent proceeding. It may be revoked or modified and terminates when final orders are entered. It may be entered in a proceeding for the modification of an existing order.
- B. Either party may request a Domestic Violence Protection Order (DVPO) or an Anti-Harassment Order (AHO) under Ch. 7.105 RCW, but it must be filed as a separate action. However, the petitioner may inform the clerk of the guardianship action and have the protection or anti-harassment hearing set on the guardianship calendar. Any ex parte order issued shall not be effective for more than 14 days. Upon court order, it may be extended to 24 days if necessary to ensure that all motions can be heard at the same time.¹²

If a DVPO is requesting to remove a child via guardianship, the residential provisions for children must be provided for under Ch. 11.130 RCW.

In issuing an order, the court shall consider the provisions of RCW 9.41.800, and shall order the respondent to surrender weapons and prohibit the respondent from possessing all firearms, dangerous weapons, and any concealed pistol license/s. Orders restraining firearm rights may only be made in a civil protection case related to an action under Title 11, not in the Title 11 case itself.

Child Support and Health Insurance

- A. In a minor guardianship, child support may be ordered according to Ch. 26.19 RCW. RCW 11.130.255. Either party may file a motion for temporary child support. The motion must be accompanied by an affidavit setting forth the facts and basis for the motion.¹³
- B. A support debt owed to the state for public assistance cannot be merged or otherwise extinguished by a final order unless the office of support enforcement had notice of the proceeding. Notice must be served personally or by certified mail and be accomplished at least 30 days before the final proceeding. The Office of Support Enforcement may then present its claim and thereby preserve the support debt.
- C. A court may require a parent to continue health insurance for a dependent child if health insurance can be extended to cover the child through a parent's employer and the employer will pay all or part of the premium for the child's insurance coverage.

Minor Conservatorship Basis - [RCW 11.130.360](#)

- A. A court may appoint a conservator to manage a minor's property and financial affairs after notice and hearing if: (1) appointment is in the minor's best interest; and either (i) the minor owns property needing management or protection that cannot otherwise be provided; or (ii) the minor's financial affairs will be put at risk or otherwise hindered because of the minor's age; or (2) appointment is necessary to obtain or provide funds for the minor's care, support, education, health, or welfare.
- B. A professional evaluation is not necessary when a petition for conservatorship is filed for a minor.¹⁴

ENDNOTES

¹ *In re Custody of Shields*, 157 Wn.2d 126, 144, 136 P.3d 117, 126 (2006), *In re the custody of C.A.M.A.*, 154 Wn.2d at 60–61, ¶ 16, 109 P.3d 405 (citing *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998)).

² *Link v. Link*, 165 Wn. App. 268, 284, 268 P.3d 963, 971 (2011).

³ RCW 10.101.010(3).

⁴ RCW 11.130.190(3).

⁵ RCW 11.130.235

⁶ RCW 11.130.240(2), (3).

⁷ *In re Custody of Shields*, 157 Wn.2d 126, 144, 136 P.3d 117, 126 (2006).

⁸ *In re Custody of Shields*, 157 Wn.2d 126, 144, 136 P.3d 117, 126 (2006) (emphasis added).

⁹ *In re Custody of BMH*, 179 Wash 2d. 224, 239, 315 P.3d 470 (2014); *In re Custody of J.E.*, 189 Wn. App. 175, 190, 356 P.3d 233 (2015).

¹⁰ *B.M.H.*, 179 Wn.2d at 236, 315 P.3d 470.

¹¹ RCW 11.130.250.

¹² RCW 11.130.257(3).

¹³ RCW 11.130.257.

¹⁴ RCW 11.130.390(5).