

**Section 48.977, Stats.**

**Guardians for Children in Need of Protective Services (CHIPS)**

**48.977 Appointment of relatives as guardians for certain children in need of protection or services. (1) DEFINITION.** In this section, “relative” means a relative as defined in s. 48.02 (15) or a person specified in s. 48.57 (3m) (a) 2.

**(2) TYPE OF GUARDIANSHIP.** This section may be used for the appointment of a relative of a child as a guardian of the person for the child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 for a cumulative total period of one year or longer.

(b) That the person nominated as the guardian of the child is a relative of the child with whom the child has been placed and that it is likely that the child will continue to be placed with that relative for an extended period of time or until the child attains the age of 18 years.

(c) That, if appointed, it is likely that the relative would be willing and able to serve as the child’s guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child’s parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

(f) That the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child’s health and safety are the paramount concerns, but that reunification of the child with the child’s parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child, except that the court is not required to find that the agency has made those reasonable efforts with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order. A guardianship order that merely references this paragraph without documenting or referencing that specific information in the order or an amended guardianship order that retroactively corrects an earlier guardianship order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(3) DESIGNATION AS A PERMANENT PLACEMENT. If a court appoints a guardian for a child under sub. (2), the court may designate the child's placement with that guardian as the child's permanent foster placement, but only for purposes of s. 48.368 (2) or 938.368 (2).

(4) PROCEDURE AND DISPOSITION. (a) *Who may file petition.* Any of the following persons may file a petition for the appointment of a guardian for a child under sub. (2):

1. The child or the child's guardian or legal custodian.
2. The child's guardian ad litem.
3. The child's parent.
4. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.
5. The department.
6. A county department under s. 46.22 or 46.23 or, if the child has been placed pursuant to an order under ch. 938, a county department under s. 46.215, 46.22 or 46.23.
7. A licensed child welfare agency that has been assigned primary responsibility for providing services to the child under a court order.
8. The person representing the interests of the public under s. 48.09.

(b) *Contents of petition.* A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall be entitled "In the interest of .... (child's name), a person under the age of 18" and shall set forth all of the following with specificity:

1. The name, birth date and address of the child.
2. The names and addresses of the child's parent or parents, guardian and legal custodian.
3. The date the child was adjudged in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11) or (11m) or 938.13 (4) and the dates that the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365.
4. A statement of the facts and circumstances which the petition alleges establish that the conditions specified in sub. (2) (b) to (f) are met.
5. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.
6. A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (cm) to be served upon all of the following persons:

- a. The child if the child is 12 years of age or older.
- b. The child's guardian and legal custodian.
- c. The child's guardian ad litem.
- d. The child's counsel.
- e. The child's parent.
- f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.
- g. The relative with whom the child is placed if the relative is nominated as the guardian of the child in the petition.
- h. The person representing the interests of the public under s. 48.09.
- i. The agency primarily responsible for providing services to the child under a court order.

2. Service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or personal service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party.

(cm) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date which allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition. Before accepting a plea of no contest to the allegations in the petition, the court shall do all of the following:

- a. Address the parties present and determine that the plea is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential disposition and the nature of the legal consequences of that disposition.
- b. Establish whether any promises or threats were made to elicit the plea of no contest and alert all unrepresented parties to the possibility that an attorney may discover grounds to contest the petition that would not be apparent to those parties.
- c. Make inquiries to establish to the satisfaction of the court that there is a factual basis for the plea of no contest.

2. If the petition is not contested and if the court accepts the plea of no contest, the court may immediately proceed to a dispositional hearing under par. (fm), unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

3. If the petition is contested or if the court does not accept the plea of no contest, the court shall set a date for a fact-finding hearing under par. (d) which allows reasonable time for the parties to prepare but is not more than 30 days after the plea hearing.

(d) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) have been met. If the court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact-finding hearing.

(e) *Court report.* The court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court a report containing the written summary under s. 48.38 (5) (e) and as much information relating to the appointment of a guardian as is reasonably ascertainable. The agency shall file the report at least 48 hours before the date of the dispositional hearing under par. (fm).

(fm) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified or set by the court under par. (cm) 2. or (d), at which any party may present evidence, including expert testimony, relevant to the disposition.

(g) *Dispositional factors.* In determining the appropriate disposition under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider any report submitted under par. (e) and shall consider, but not be limited to, all of the following:

1. Whether the relative would be a suitable guardian of the child.
2. The willingness and ability of the relative to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.
3. The wishes of the child.

(h) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the relative as the child's guardian is not in the best interests of the child.
2. A disposition ordering that the relative with whom the child has been placed be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

(i) *Effect of disposition on permanency plan review process.* After a disposition under par. (h), the child's permanency plan shall continue to be reviewed under s. 48.38 (5), if applicable.

(5) DUTIES AND AUTHORITY OF GUARDIAN. (a) *Full guardianship.* Unless limited under par. (b), a guardian appointed under sub. (2) shall have all of the duties and authority specified in s. 48.023.

(b) *Limited guardianship.* The court may order that the duties and authority of a guardian appointed under sub. (2) be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (h) 2. or any revised order under sub. (6). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian appointed under sub. (2) to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

(6) REVISION OF GUARDIANSHIP ORDER. (a) Any person authorized to file a petition under sub. (4) (a) may request a revision in a guardianship order entered under this subsection or sub. (4) (h) 2., or the court may, on its own motion, propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the court's disposition.

(b) The court shall hold a hearing on the matter prior to any revision of the guardianship order if the request or court proposal indicates that new information is available which affects the advisability of the court's guardianship order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a revision if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the court determines that a revision would be in the best interests of the child.

(7) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years or until terminated by the court, whichever occurs earlier.

(b) *Removal for cause.* 1. Any person authorized to file a petition under sub. (4) (a) may request that a guardian appointed under sub. (2) be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the court's disposition.

2. The court shall hold a hearing on the matter unless written waivers of objections to the removal are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or court proposal shall be attached to the notice. The court shall remove the guardian for cause if, at the hearing, the court finds that it has been proved by clear and convincing evidence that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and if the court determines that removal of the guardian would be in the best interests of the child.

(c) *Resignation.* A guardian appointed under sub. (2) may resign at any time if the resignation is accepted by the court.

(d) *Termination on request of parent.* 1. A parent of the child may request that a guardianship order entered under sub. (4) (h) 2. or a revised order entered under sub. (6) be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child.

2. The court shall hold a hearing on the matter unless written waivers of objections to the termination are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request shall be attached to the notice. The court shall terminate the guardianship if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the parent is willing and able to carry out the duties of a guardian and if the court determines that termination of the guardianship would be in the best interests of the child.

(e) *Termination on termination of parental rights.* If a court enters an order under s. 48.427 (3p) or 48.428 (2) (b), the court shall terminate the guardianship under this section.

**(8) RELATIONSHIP TO CH. 880.** (a) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(b) Nothing in this section prohibits an individual from petitioning a court under ch. 880 for appointment of a guardian.