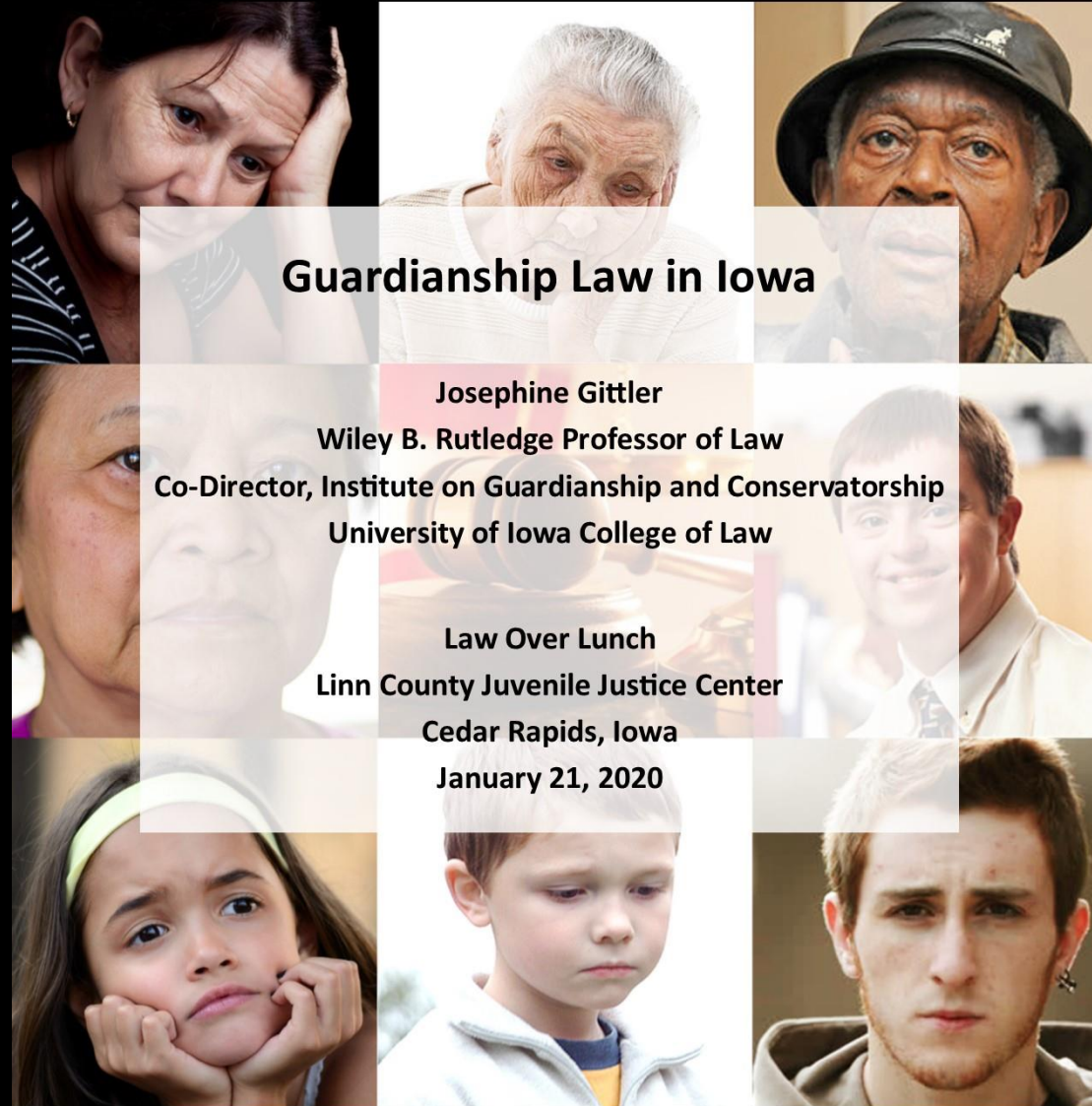


**Institute on Guardianship & Conservatorship**



**Guardianship Law in Iowa**

**Josephine Gittler**

**Wiley B. Rutledge Professor of Law**

**Co-Director, Institute on Guardianship and Conservatorship**

**University of Iowa College of Law**

**Law Over Lunch**

**Linn County Juvenile Justice Center**

**Cedar Rapids, Iowa**

**January 21, 2020**

# Enactment of House File 591 and House File 610

- HF 591, governing minor guardianships, passed the House and Senate unanimously on a bipartisan basis.
- HF 610, a companion bill governing the opening and administration of adult and minor conservatorships and adult guardianships, also passed unanimously.
- On May 1, 2019, the Governor signed HF 591 and HF 610 into law.
- The effective date of HF 591 and HF 610 was January 1, 2020.

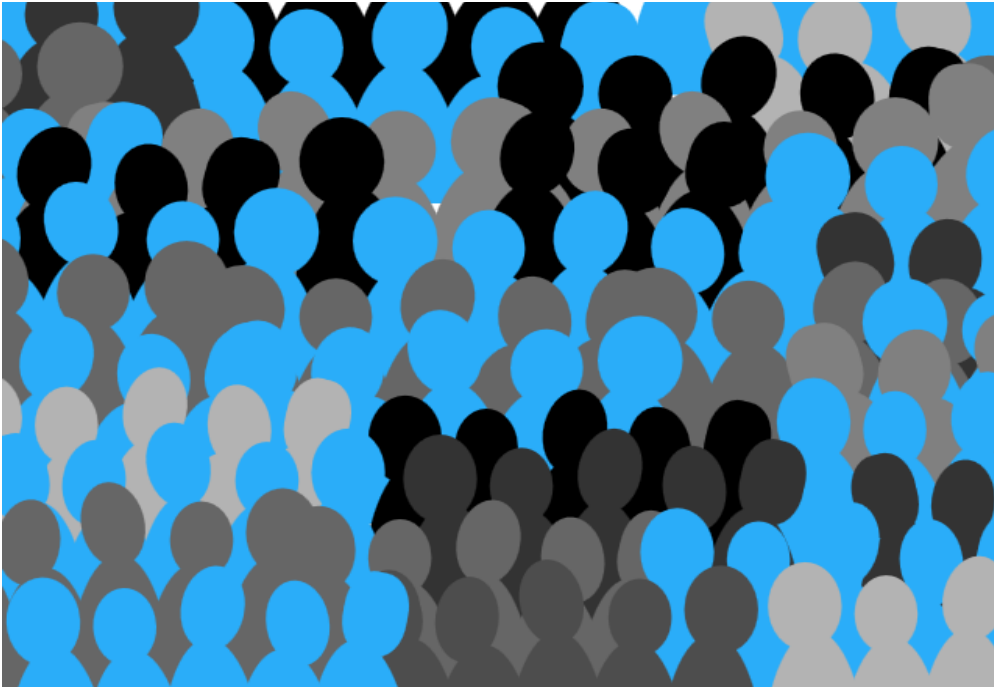
# Roadmap

- Introduction
  - Iowa Guardianship and Conservatorship System
  - Iowa Supreme Court Guardianship and Conservatorship Reform Task Force, an Overview
  - HF 591 Goal
- HF 591 Governing Minor Guardianships
  - Opening guardianship
  - Duties and responsibilities of guardians

# INTRODUCTION



There were **23,785** total open guardianship and conservatorship cases statewide as of the end of 2018.



# IOWA GUARDIANSHIP & CONSERVATORSHIP STUDY

- Study was conducted by Professor Josephine Gittler and research assistants at the University of Iowa College of Law.
- Guardianship and conservatorship case files (paper & EDMS) were reviewed.



**IOWA SUPREME COURT  
GUARDIANSHIP &  
CONSERVATORSHIP  
REFORM TASK FORCE  
2015–2017**



# IOWA SUPREME COURT TASK FORCE MEMBERSHIP

72 members representative of multiple stakeholders

- The Bench – Judges and other Judicial Branch Personnel
- The Bar
- Guardians and Conservators
- Banks and Bonding Companies
- Disability, Aging, Mental Health, Brain Injury Organizations and Advocates
- Child Welfare Advocates
- State Agencies
- Service Providers





# FINAL TASK FORCE REPORT

- **Task Force Final Report submitted August 2017**  
[https://www.iowacourts.gov/static/media/cms/Final\\_Task\\_Force\\_Report\\_5A992F4D4AF86.pdf](https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf)
- **272 recommendations addressing multiple major systemic deficiencies**

Josephine Gittler, et al., Reforming Iowa's Guardianship and Conservatorship System: Minor Guardianships, Drake Law Review Discourse. See, <https://lawreviewdrake.files.wordpress.com/2018/06/reforming-iowas-guardianship-and-conservatorship-system-minor-guardianships.pdf>



# Introduction to HF 591 and Juvenile Court Minor Guardianship Jurisdiction

**Institute on Guardianship and Conservatorship**

## **Overall goal of HF 591/Chapter 232D:**

To ensure that children receive needed care and protection and that constitutionally protected parental rights are protected.

# Transfer of Minor Guardianship Jurisdiction to Juvenile Court

- Guardianship and Conservatorship Reform Task Force recommended juvenile court jurisdiction over minor guardianships
- HF 591 adopted this recommendation and creates a new chapter of the Juvenile Code, 232D, governing minor guardianships

# Reasons for Transfer of Jurisdiction to Juvenile Court

- The major reasons for juvenile court jurisdiction
  - Juvenile court judges are specialized judges with expertise as to the parental problems that most minor guardianships involve.
  - Juvenile court has a one judge/one family case management approach fostering continuity and consistency in the handling of a case.
  - Juvenile court judges best able to deal with actual and potential overlap between minor guardianship cases and child in need of assistance (CINA) cases.

# Jurisdiction

- Juvenile court has “exclusive jurisdiction of minor guardianship cases” [§ 232D.103]
- 232D applies to “guardianship and guardianship proceedings established or pending before, on or after January 1, 2020 [HF 591, § 45]

# Venue

- The venue for guardianship proceedings is the judicial district where the minor is found or of the minor's residence [§ 232D.104(1)]
- Court may transfer a proceeding “to the juvenile court of any county having venue at any stage in the proceedings” as follows:
  - The best interests of the minor or the convenience of the proceedings shall be served by a transfer [§ 232.D.104(2)(a)]
  - With the consent of the receiving court, the court may transfer the case to the court of the county of the minor's residence [§ 232D.104(2)(b)]

# Proceedings Not Governed by Chapter 232D

HF 591 provides

- Petitioner for minor conservatorship governed by probate code chapter 633 [§ 232D.105(1)]
- Petition for minor guardianship and minor conservatorship shall not be combined [§ 232D.105(2)]
- If guardianship involves Indian child proceeding is subject to Iowa Indian Child Welfare Act [§ 232D.105(3)]



# Transfer of Minor Guardianship to Juvenile Court: Judicial Branch Implementation

- HF 591 had a delayed effective January 1, 2020 to allow transition planning

# Basis for Opening Minor Guardianship

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# Basis for Opening Guardianship: Termination of Parental Rights and CINA cases

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- Court authorized to open guardianship if all parental rights have been terminated [§232D.201(1)]
- Court authorized to appoint guardian for minor in CINA cases [§232D.201(2)]

# Basis for Opening Guardianship: Death of Parent

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- Court authorized to open minor guardianship if both parents deceased [§ 232D.201]
- In appointing a guardian for a minor whose parents are deceased, the court shall give preference to a person, if qualified and suitable, nominated as guardian for a minor by a will that was executed by the parent or parents having legal custody of the minor at the time of the parent's or parents' death, and that was admitted to probate under chapter 633 [§ 232D.202]

# Basis for Opening Guardianship: Guardianship with Parental Consent

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- The court may appoint a guardian for a minor if the court finds all of the following:
    - The parent or parents having legal custody of the minor understand the nature of the guardianship and knowingly and voluntarily consent to the guardianship.
    - The minor is in need of a guardianship because of any one of the following:
      1. The parent having legal custody of the minor has a physical or mental illness that prevents the parent from providing care and supervision of the child
      2. The parent having legal custody of the minor is incarcerated or imprisoned
      3. The parent having legal custody of the minor is on active military duty
      4. The minor is in need of a guardianship for some other reason constituting good cause shown
    - Appointment of a guardian for the minor is in the best interest of the minor.
- [§ 232D.203]

# Basis for Opening Guardianship: Guardianship with Parental Consent, cont.

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- If the guardianship petition requests a guardianship with parental consent, the petition shall include an affidavit signed by the parent or parents verifying that the parent or parents knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form prescribed by the judicial branch.
- On or before the date of the hearing on the petition, the parent or parents and the proposed guardian shall file an agreement with the court. This agreement shall state the following:
  - the responsibilities of the guardian,
  - the responsibilities of the parent or parents,
  - the expected duration of the guardianship, if known.
- If the court grants the petition, it shall approve the guardianship agreement between the custodial parent and the proposed guardian and incorporate its terms by reference unless the court finds the agreement was not reached knowingly and voluntarily or is not in the best interests of the child.  
[§ 232D.203]

# Basis for Opening Guardianship: Guardianship Without Parental Consent

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- Establishment of a minor guardianship without parental consent is authorized provided certain requirements are met.
- The rationale for such guardianships is that they may constitute an appropriate and less drastic alternative to a CINA adjudication or the termination of parental rights, and they may be appropriate when grounds for a CINA adjudication or termination of parental rights are lacking, but the requirements for a guardianship are met.

# Basis for Opening Guardianship: Guardianship Without Parental Consent, cont.

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- The court may appoint a guardian for a minor without the consent of the parent or parents having legal custody of the minor if the court finds by clear and convincing evidence all of the following:
  - there is a person serving as a de facto guardian of the minor,
  - there has been “a demonstrated lack of consistent parental participation in the life of the minor by the parent”,
  - guardianship is in the child’s best interests.

[§ 232D.204]



# Basis for Opening Guardianship: Guardianship Without Parental Consent, cont.

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- In determining whether a parent has demonstrated a lack of consistent participation in the minor's life, the court may consider all of the following:
  - The intent of the parent in placing the custody, care, and supervision of the minor with the person petitioning as a de facto guardian and the facts and circumstances regarding such placement
  - The amount of communication and visitation of the parent with the minor during the alleged de facto guardianship
  - Any refusal of the parent to comply with conditions for retaining custody of the minor set forth in any previous court orders

[§ 232D.202]

# Basis for Opening Guardianship: Guardianship Without Parental Consent, cont.

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- The court may establish a nonconsensual guardianship if it is shown by clear and convincing evidence that “no parent is willing or able to exercise the power the court would grant to the guardian” and that guardianship is in the minor’s best interests.

# Basis for Opening Guardianship: Guardianship Without Parental Consent, cont.

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- Authorization of minor guardianship raises complex federal and state constitutional issues.

# Minor Guardianship Procedures and Proceedings

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# Petition: Filing

- Guardianship for a minor may be filed “by any person with an interest in the welfare of the minor”  
[§ 232D.301(1)]

# Petition: Contents

- There is a new requirement that the petition must contain “*a concise statement*” of the “*factual basis*” for the petition  
[§ 232D.301(3)]

# Petition: Contents

- The petition shall list, to the extent known, all of the following:
  - The name, age, and address of the minor who is the subject of the petition
  - The name and address of the petitioner and the petitioner's relationship to the minor
  - If the petitioner is not the proposed guardian, the name and address of the proposed guardian and the reason the proposed guardian should be selected
  - The name and address, to the extent known and ascertainable, of the following: (1) Any living parents of the minor. (2) Any legal custodian of the minor (3) Any adult who has had the primary care of the minor or with whom the minor has lived for at least six months prior to the filing of the petition [§§ 232D.302(2)(a-d)]

# Petition: Contents

- [A]ny additional information, to the extent known and reasonably ascertainable required by section 598B.209 shall be included in an affidavit attached to the petition.”  
[§ 232D.301(5)]
- Chapter 598B, the Uniform Child-Custody Jurisdiction and Enforcement Act applies to minor guardianships and has detailed requirements re information to be furnished in affidavit.



# Notice

- “The filing of a petition shall be served upon the minor who is the subject of the petition in the manner of an original notice in accordance with the rules of civil procedure governing such notice. Notice to the attorney representing the minor; if any, is notice to the minor.”  
[§ 232D.302(1)]
- “Notice shall be served upon the minor’s known parents listed in the petition in accordance with the rules of civil procedure.”  
[§ 232D.302(2)]

## Notice, cont.

- “Notice shall be served upon other known persons listed in the petition in the manner prescribed by the court, which may be notice by mail. Failure of such persons to receive actual notice does not constitute a jurisdictional defect precluding the appointment of a guardian by the court.”  
[§ 232D.302(3)]
- Notice of the filing of a petition given to a person under subsection 2 or 3 shall include a statement that the person may register to receive notice of the hearing on the petition and other proceedings and the manner of such registration  
[§ 232D.302(4)]

# Limited Minor Guardianship

- The petition *“shall state whether a limited guardianship is appropriate”*  
[§ 232D.301(4)]
- A limited guardianship is defined as *“a guardianship that grants the guardians less than all the powers available under this chapter [§ 232D] or otherwise restricts the power of the guardian.”*  
[§ 232D.102(8)]

# Emergency Appointment of Temporary Guardian

- A person authorized to file a petition under section 232D.301 may file a petition for the emergency appointment of a temporary guardian for the minor.
- The petition shall state “the reason the emergency appointment of a temporary guardian is sought.”
- The court may enter an ex parte order appointing a temporary guardian for a minor on an emergency basis under this section if the court finds that all of the following are met:
  - “There is not sufficient time to file a petition and hold a hearing pursuant to section 232D.301,” and
  - “The appointment of temporary guardian is necessary to avoid immediate or irreparable harm to the minor.”  
[§ 232D.308]

# Emergency Appointment of Temporary Guardian, cont.

- The powers of the temporary guardian set forth in the ex parte order “shall be limited to those necessary to address the emergency situation requiring the appointment of a temporary guardian.”
- The ex parte order shall terminate within thirty days after the order is issued.  
[§ 232D.308]

# Appointment for Guardian of a Minor on a Standby Basis

- An adult person having physical and legal custody of a minor may execute a verified petition for the appointment of a guardian of the minor upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition.

# Standby Appointment of Guardian for Minor Approaching Majority

- Notwithstanding section 232D.103, any adult with an interest in the welfare of a minor who is at least seventeen years and six months of age may file a verified petition pursuant to section 633.552 to initiate a proceeding to appoint a guardian of the minor to take effect on the minor's eighteenth birthday  
[§ 232D.311]

# Hearing on Petition

- The court “shall fix the time and place of hearing on the petition and shall prescribe a time not less than twenty days after the date the notice is served unless the court finds there is good cause shown to shorten the time period. The court shall also prescribe the manner of service of the notice of such hearing.”
- The minor who is the subject of a petition filed pursuant to section 232D.301 “shall be entitled to attend the hearing on the petition if the minor is of an age appropriate to attend the hearing. A presumption shall exist that a minor fourteen years of age or older is of an age appropriate to attend the hearing.”  
[§ 232D.306]



# Hearing on Petition, cont.

- The court “shall not exclude a minor entitled to attend the hearing under subsection 2 unless the court finds that there is good cause shown for excluding the minor from attendance.”  
[§ 232D.306]

# Appointment and Role of Counsel and Court Visitor in Minor Guardianship Proceedings

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# Appointment and Role of Attorney: For Minor

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- Upon the filing of a petition for appointment of a guardian pursuant to section 232D.301, “the court shall appoint an attorney for the minor, if the court determines that the interests of the minor are or may be inadequately represented.”
- An attorney representing the minor “shall advocate for the wishes of the minor to the extent that those wishes are reasonably ascertainable and advocate for best interest of the minor if the wishes of the minor are not reasonably ascertainable.”

[§ 232D.303]

# Appointment and Role of Attorney: For Parent

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- Upon the filing of a petition for appointment of a guardian, the court shall appoint an attorney for the parent identified in the petition if all of the following are true:
  - The parent objects to the appointment of the minor.
  - The parent requests appointment of an attorney and the court determines that the parent is unable to pay for an attorney in accordance with section 232D.505.

[§ 232D.305]

# Use of the Term Court Visitor

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- Sections 232D.305 substitutes the term “court visitor” for the term “guardian ad litem.”

# Appointment of Court Visitor

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- The court “may” appoint a court visitor. Thus the appointment of a court visitor is not mandatory, and the court has discretion as to whether to appoint a court visitor. [§ 232D.305(1)]
- The purpose of the court visitor provision is to ensure that if needed and appropriate, the court has an independent source of information about whether to appoint a guardian or conservator, whom the court should appoint as guardian or conservator, and what authority and powers the court should grant the guardian or conservator

# Use of the Term Court Visitor

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- Unless otherwise enlarged or circumscribed by the court, the duties of court visitor shall include all of the following:
  - Conducting, if the minor's age is appropriate, an initial in-person interview with the minor.
  - Explaining to the minor, if the minor's age is appropriate, the substance of the petition, the purpose and effect of the guardianship proceeding, the rights of the minor at the hearing, and the general powers and duties of a guardian.
  - Determining, if the minor's age is appropriate, the views of the minor regarding the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship.

# Use of the Term Court Visitor, cont.

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- Interviewing the parent or parents and any other person with legal responsibility for the custody, care, or both, of the minor.
- Interviewing the petitioner, and if the petitioner is not the proposed guardian, interviewing the proposed guardian.
- Visiting, to the extent feasible, the residence where it is reasonably believed that the minor will live if the guardian is appointed.
- Making any other investigation the court directs, including but not limited to interviewing any persons providing medical, mental health, educational, social, or other services to the minor.



# Written Report by Court Visitor

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- The court visitor shall submit a written report to the court that contains all of the following:
  - A recommendation regarding the appropriateness of a guardianship for the minor.
  - A statement of the qualifications of the guardian together with a statement of whether the minor has expressed agreement with the appointment of the proposed guardian.
  - Any other matters the court visitor deems relevant to the petition for guardianship and the best interests of the minor.
  - Any other matters the court directs.
- The report of the court visitor shall be made part of the court record unless otherwise ordered by the court.

# Appointment of Persons to Serve as Court Visitor

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- Attorneys have traditionally been appointed as guardians ad litem. While the court can appoint attorneys to serve as court visitor, an attorney is prohibited from serving both as an attorney representing the minor and as a court visitor because they have different roles that may conflict.

# Appointment of Persons to Serve as Court Visitor

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- The court has discretion as to whom to appoint as court visitor and may appoint persons with a variety of qualifications and backgrounds (e.g., attorneys, social workers, psychologists, social workers) depending upon the type of investigation needed by the court.
- There currently is no program of trained volunteers to serve as court visitors such as the Court Appointed Special Advocates for Children (CASA) program.

# Selection of Guardian for Minor and Background Check of Proposed Guardian

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# Selection of Guardian for Minor: Qualifications and Preferences

- The court shall appoint any “qualified and suitable person who is willing to serve” subject to two preferences [§232D.308(1)] Under this general standard, the court will continue to have broad discretion as to who to appoint as a guardian.
- The two preferences are:
  - A person, if qualified and suitable, “nominated as guardian for a minor by a will that was executed by the parent or parents having legal custody at the time of the parent’s or parents’ death and that was admitted to probate under chapter 633.  
[§232D.308(2)]
  - A preference for a person, if qualified and suitable, “requested by a minor fourteen years of age or older.”  
[§232D.308(3)]

# Background Check: Existing Law

- Probate Code currently does not require background checks.
- Iowa Supreme Court Guardianship and Conservatorship Reform Task Force recommended background checks.
- Background checks are safeguard against court appointment of guardians or conservators who may misuse their authority.

# Requirement of Background Checks

- Background checks of prospective guardian is required.
- Only exception is financial institutions with Iowa trust powers.
- Background checks required are:
  - Iowa Criminal Records
  - Sex Offender Registry
  - Dependent Adult Abuse Registry
  - Child Abuse Registry

# Effect of Negative Background Check

- Background check is to furnish court with information relevant to appropriateness of appointment.
- Judge has discretion as to whether to treat negative information as disqualifying.



# Background Check Procedures

- Judicial branch must establish procedures for electronic access to single contact repository [SING].
- Judicial branch to establish procedures in conjunction with departments of public safety, human services, and state chief information officer.

# Cost and Payment for Background Checks

- The petitioner shall be responsible for a SING background check.
- Cost of SING background check is \$15.

# Obtaining Release of Information from Proposed Guardian

- Attorneys representing petitioners should obtain release of registry information from the prospective guardian.

# Duties, Responsibilities and Powers of Guardians of Minors, Monitoring of Minor Guardianships and Guardian's Reporting Requirements

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# Problems with Existing Court Monitoring

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- Retrospective reporting to the court by guardians
- Inadequate information provided courts in annual reports
- Lack of proactive court review of annual reports

# Goal of HF 591

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- To strengthen the authority and ability of courts to effectively and efficiently monitor guardianships to ensure that persons under guardianship receive needed care and protection.

# Guardian's Reporting Requirements: Initial Care Plan

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- In addition to existing requirement of annual reports, HF 591 requires filing initial care plan by guardian for court review and approval.
- Benefits of initial care plan
  - Requires guardians to think ahead about the protected person's needs and the services and resources available for those needs and to develop a plan to meet those needs.
  - Enables the court to determine at an early stage whether a guardian is capable of providing or arranging for the provision of the protected person's personal care needs.
  - Increases ability of the court to identify and prevent problems before they occur or before they have negative consequences.

# Initial Care Plan: Contents

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- The contents of the Initial Care Plan shall include but not be limited to the following:
  - The minor's current residence and guardian's plan for the minor's living arrangements
  - The guardian's plan for payment of the minor's living expenses and other expenses
  - The minor's health status and the guardian's plan for meeting the minor's health needs



# Initial Care Plan: Contents, cont.

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- The contents of the Initial Care Plan shall include but not be limited to the following (continued):
  - The minor's educational training and vocational needs and the guardian's plan for meeting the minor's educational training and vocational needs
  - The guardian's plan for facilitating contacts of the minor with the minor's parents
  - The guardian's plan for contact with and activities on behalf of the minor

# Initial Care Plan: Best Practices

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- In the initial care plan submitted to the court the guardian should expressly request court approval for any powers reasonably necessary to carry out the plan.
- The Supreme Court issued an order (<https://www.iowacourts.gov/collections/448/files/934/embedDocument/>) stating that for guardianships in existence prior to 1/1/2020, “Guardians [...] have continuing authority to perform acts concerning the protected person that were authorized prior to January 1, 2020 through the date of the guardian’s previously scheduled annual report.”

# Guardian's Reporting Requirements: Annual Reports and Final Report

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- HF 591 Requirement of Annual Reports
- HF 591 Requirement of Final Report

# Annual Reports: Content

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Contents of the annual report shall include but not be limited to the following:

- The current residence and living arrangements of the minor
- The sources of the payment for the minor's living expenses and other expenses
- The minor's health status and health services provided the minor
- The minor's mental, behavioral, or emotional problems, if any, and professional services provided the minor for such problems

# Annual Reports: Content, cont.

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Contents of the annual report shall include but not be limited to the following (continued):

- The minor's educational status and educational training and vocational services provided the minor
- The nature and extent of the guardian's visits with and activities on behalf of the minor
- The need for continuation of guardianship
- The ability of the guardian to continue as guardian
- The need of the guardian for assistance in providing or arranging for the provision of care for the minor

# Forms for Initial Care Plan and Annual Report

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- Supreme Court Initial Care Plan for Minors Form
- Supreme Court Annual Report for Minors Form
- The Supreme Court forms must be used by guardians that are not represented by an attorney. Guardians do not have to retain an attorney to fill and submit these forms.
- Guardians who are represented by an attorney do not have to use these forms.
- These forms are available in fillable PDF format from the Institute on Guardianship and Conservatorship at <https://nhlp.law.uiowa.edu/programs-and-institutes/institute-guardianship-and-conservatorship/fillable-pdf-guardianship-and>

# Waiver of Report Filing Requirements, Extension of Time for Filing and Enforcement of Filing Requirements

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- HF 591 Requirements re Waiver: Extensions of Time and Enforcement of Reporting Requirements
- Rules of Probate Procedure, Rule 7.8 Requirements

HF 591 represents a change in the legal framework for the exercise of authority (powers) by guardians with and without court approval. It contemplates that guardians include in their initial plans and annual reports their plans for the upcoming reporting period and request court approval to exercise the authority (powers) necessary to carry out those plans during that reporting period.



# Order Appointing Guardian and Powers of Guardian

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➤ Powers the Court May Grant to a Guardian are as follows

- Taking custody of the minor and establishing the minor's permanent residence if otherwise consistent with the terms of any order of competent jurisdiction relating to the custody, placement, detention, or commitment of the minor within the state
- Consenting to medical, dental, and other health care treatment and services for the minor
- Providing or arranging for the provision of education for the minor including but not limited to preschool education, primary education and secondary education, special education and related services, and vocational services.

# Order Appointing Guardian and Powers of Guardian, cont.

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- Consenting to professional services for the minor to ensure the safety and welfare of the minor
- Applying for and receiving funds and benefits payable for the support of the minor
- Any other powers the court may specify

# Order Appointing Guardian and Powers of Guardian

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## ➤ Powers That May be Only Exercised Upon Court Approval

- Changing the protected person's residence to a nursing home or other secure facility;
- Consenting to, withholding, or withdrawal of life-sustaining procedures, abortion, or sterilization;
- Denying all communication, visitation, or interaction of protected person with others

# QUESTIONS

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# CONTACT INFORMATION

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**Institute on Guardianship and Conservatorship website**

<https://nhlp.law.uiowa.edu/>

See website for new laws, Supreme Court forms, presentations and information about CLE videos and materials and other educational videos and materials.