

## CHILDREN & THE LAW SECTION

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The Children & the Law Section of the State Bar of Wisconsin supports AB 47, which revises and updates current law regarding the guardianships of children.

This bill seeks to repeal those portions of Chapter 54 which provide for the appointment of a guardian of the person of a minor and, in its place, create Wis. Stat. § 48.9795. The Children & the Law Section of the State Bar of Wisconsin believes this legislation – and the insertion of this law into Chapter 48 - is necessary to improve the legal process for meeting the needs of children if the appointment of guardian for a child becomes necessary. Guardianship of the estate of a minor will remain in Chapter 54.

When Chapter 880 was repealed and Chapter 54 created, the primary focus was on improving how guardianships for the elderly and disabled were sought, granted and administered. While guardianships for children were included in that rewrite, the needs of children under guardianship are separate and distinct and, therefore, not fully addressed in Chapter 54. The development of mandatory circuit court forms for Chapter 54 guardianships brought the distinctions between adult guardianships and minor guardianships into sharp focus. Judges, guardian's ad litem, private practitioners, corporation counsel, district attorneys along with legislators and other stakeholders participated in the Study Committee on Minor Guardianship to fashion a legislative solution to these deficiencies in the current law. The collective efforts of the study committee resulted in recommendations that were accepted unanimously by the Joint Legislative Council resulting in the introduction of AB 47. This proposed legislation inserts those changes that are not addressed in Chapter 54 and inserts this law into Chapter 48 in order to significantly improve the legal process for meeting the needs of children whose parents are unable to provide those needs as legal guardian.

Some of the specific issues which are addressed by the creation of Wis. Stat. § 48.9795 include the development of four distinct categories of guardianship (full, limited, temporary and emergency), clarification of who is an interested party as it relates to a minor, clarification of parental rights when a guardianship is granted, clarification of the responsibilities and rights of the guardian, clarification of the legal standard and burden of proof for petitioning for and terminating a guardianship as well as clarification of the procedural steps for each of these proceedings and clarification of the duties of a guardian ad litem. The bill also incorporates the case law standard for an involuntary removal of guardianship rights from a parent.

The guardianship reform bill for minors provides a comprehensive change to the existing guardianship laws that impact children by eliminating confusion, inconsistency and barriers that currently exist for implementing guardianship proceedings for a minor in Wisconsin as follows:

1. Current guardianship statutes under Chapter 54 combine both adult and minor guardianship law. Unfortunately, the procedures that exist under Chapter 54 for adults needing guardianship orders are not differentiated for juveniles. As a result, the current law under Chapter 54 is unable to respond to the unique issues that only impact minors requiring guardianship such as emergency, temporary, limited or full decision-making authority.



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2. The body of case law regarding minor guardianship which has evolved from the former existence of guardianship law under Chapter 880 and currently Chapter 54 is not incorporated into the existing statutes. As a result because of the lack of clarity in existing statutes, decisions by Courts in minor guardianship cases are frequently inconsistent on a state wide basis.
3. The proposed reform bill removes these impediments in the following manner:
  - a. The guardianship law for minors is separated from the existing guardianship law affecting adults in Chapter 54 and is placed in Chapter 48 – The Children’s Code. This provides an ease of reference for those accessing all of the guardianship laws of minors. This combines all minor guardianship cases under Chapter 48 whereas currently some types are vested in Chapter 48 whereas others are contained in Chapter 54. This will eliminate confusion and increase ease of access and application. Moreover, Chapter 48 has well defined procedures and well settled law which will benefit the courts and practitioners with placement of minor guardianship laws in Chapter 48.
  - b. The four specific types of guardianships affecting decision making on the issues affecting minors is specifically addressed under this proposed legislation whereas the current law under Chapter 54 for adults does not address this. This legislation creates four types or categories of guardianships ranging from emergency, temporary, limited and full guardianship. These categories specifically address the unique decision-making problems that caretakers, parents and the Courts must face with a minor. With the creation of these categories, private family matters are offered a flexible legal solution without involving governmental agencies.
  - c. The procedural legal requirements that accompany these types of guardianships are designed to respond to the specific time frames that the particular type of guardianship requires. Emergency guardianship procedures are crafted so that the court is able to respond quickly when necessary without having to follow the cumbersome requirements for adults under Chapter 54, whereas other non-emergent categories of guardianships have different procedural requirements that provide for timely decision making as well as clearly delineating the length of time that such orders will remain in effect.
  - d. The body of case law which has evolved interpreting minor guardianship law under the prior Chapter 880 and the current Chapter 54 is now incorporated into this reform bill. The lack of clarity currently leads to speculation and often inconsistent application of the minor guardianship law state wide. Incorporating the case law standards into the legislation, along with clear criteria for each step in the process will eliminate the speculation and confusion that currently exists with minor guardianships under Chapter 54.

The Children & the Law Section believes this legislation vastly improves the guardianship law as applied to minors and encourage your support of this important legislation for children.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, [ldavis@wisbar.org](mailto:ldavis@wisbar.org) or 608.852.3603.

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