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# H. F. 610 GUARDIANSHIP AND CONSERVTORSHIP CHANGES



#### **A. Filing of petition for adult guardianship or adult conservatorship**

1. HF 610 provides that “*a person with an interest in the welfare of the adult*” may file a petition for appointment of a guardian or conservator for an adult. [§ 633.556(1)]

2. HF 610 repeals the current Probate Code provisions regarding *voluntary petitions* permitting appointment of a guardian or conservator upon “*petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant.*” [§§ 633.557 and 633.572]

3. However, HF 610 provides that “*a person with an interest in the welfare of the adult, which may include the adult who is the subject of the petition,*” can file a petition. (emphasis added) [§ 633.556(1)] Thus, HF 610 expressly allows an adult to file a petition on the adult’s own behalf.

4. A petition filed by an adult on the adult’s own behalf is subject to the requirements of HF 610 pertaining to proceedings with respect to the appointment of a guardian or conservator with one exception. The exception is the provision of HF 610 regarding court appointment of counsel for a respondent, which states that an adult respondent is entitled to counsel, and that upon the filing of a petition, the court shall appoint an attorney to represent the respondent. [§ 633.561(1)(a)] This provision does not apply to a respondent who has filed a petition on the respondent’s own behalf.

**B. Filing of petition for minor conservatorship**

1. HF 610 provides that “a person with an interest in the welfare of the minor” may file a petition for appointment of a conservator for a minor.

[§ 633.557(1)]

**C. Contents of petition for adult guardianship and adult conservatorship:**

1. HF 610 provides the new requirement that a petition for appointment of a guardian or conservator for an adult must contain a concise statement of the “*factual basis*” for the petition that allegedly satisfies the substantive criteria (basis) for opening a guardianship or conservatorship for an adult.

[§ 633.556(2)] HF 610 also specifically provides that the petition to appoint a guardian or conservator must contain a brief description that make the respondent “*unable to communicate or carry out decisions concerning the respondent’s financial affairs.*” [§ 633.556(2) (8)]

Note: The substantive criteria for the appointment of a guardian for an adult are: “*The decision-making capacity of the respondent is so impaired that the respondent is unable to care for the respondent’s safety, or to provide for necessities such as food, shelter, clothing, or medical care without which physical injury or illness may occur,*” and “[*t*]he appointment of a guardian is in the best interest of the respondent.” [§ 633.552]

The substantive criteria for the appointment of a conservator for an adult are: “*The decision-making capacity of the respondent is so impaired that the respondent is unable to make, communicate, or carry out important decisions concerning the respondent’s financial affairs,*” and “[*t*]he appointment of a conservator is in the best interest of the respondent.” [§ 633.553]

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2. HF 610 expands the list of persons who must be included in the petition beyond the list currently required by the Probate Code.

a. The name and address of the petitioner and the petitioner's relationship to the respondent and the name and address of the proposed guardian [or conservator] and the reason the proposed guardian [or conservator] should be selected. [§ 633.556 (4) & (5)(a)] Note: the listing of the proposed conservator as well as the proposed guardian appears to have been omitted in error.

b. The name and address, to the extent known, of the following also must be listed:

- Any spouse of the respondent. [§ 633.556(5)(b)]
- Any adult children of the respondent. [§ 633.556(5)(c)]
- Any parents of the respondent. [§ 633.556(5)(d)]
- Any adult who has had the primary care of the respondent or with whom the respondent has lived for at least six months prior to the filing of the petition, or any institution or facility where the respondent has resided for at least six months prior to the filing of the petition. [§ 633.556(5)(e)]
- Any legal representative or representative payee of the respondent. [§ 633.556(5)(f)]
- Any person designated as an attorney in fact in a durable power of attorney for health care, or any person designated as an agent in a durable power of attorney. [§ 633.556(5)(g)]

#### **D. Contents of petition for minor conservatorship**

1. HF 610 provides the new requirement that the petition must contain a concise statement of the “factual basis” for the petition that allegedly satisfies the substantive criteria for the appointment of a conservator. [§ 633.557(2)]

Note: The substantive criteria for the appointment of a conservator for a minor is: “*The minor has funds or other property requiring management or protection that otherwise cannot be provided,*” or “[*t*]he minor has or may have financial affairs that may be put at unreasonable risk or hindered because of the minor’s age,” or “[*a*] conservator is needed to obtain or provide funds or other property.” [§ 633.554]

2. HF 610 expands the list of persons who must be listed in the petition. It provides that the following must be listed:

- The minor’s name, age, and address. [§ 633.557(3)(a)]
- The name and address of the petitioner and the petitioner’s relationship to the minor. [§ 633.557(3)(b)]
  
- The name and address of the proposed conservator and the reason the proposed conservator should be selected. [§ 633.557(3)(c)]
- If the petitioner or the proposed conservator is not the parent or parents having legal custody of the minor, the name and address, to the extent known, of the following:
  - The parent or parents having legal custody of the minor. [§ 633.557(3)(d)(1)]
  - Any adult who has had primary care of the minor or with whom the minor has lived for at least 6 months prior to the filing of the petition, or any institution or facility where the minor has resided for at least 6 months prior to the filing of the petition. [§ 633.557(3)(d)(2)]

## **II. Notice to Respondent**

### **A. Notice to adult respondent**

1. HF 610 requires that a respondent be served notice of the petition and the hearing on the petition in the manner of an original notice. [§ 633.558 (1)]

Notice to the attorney representing the respondent, if any, is notice to the respondent. [§ 633.558(1)]

2. HF 610 requires notice to be served on “*other known persons listed in the petition in a manner prescribed by the court, which may be notice by mail in accordance with the Iowa rules of civil procedure.*” [§ 633.558(2)]

3. HF 610 requires that notice to anyone other than the respondent state that the recipient “*may request to receive notice of the petition and other proceedings and the manner of such registration.*” [§ 633.558(3)]

### **B. Notice for minor respondent**

1. HF 610 requires that a minor respondent be served notice of the petition and the hearing on the petition in the manner of the original notice. Notice to the attorney representing the respondent, if any, is notice to the respondent. [§ 633.559(1)]

2. HF 610 requires notice to be served to the known parent or parents listed in the petition in accordance with the Iowa Rules of Civil Procedure. [§ 633.559(2)]

3. HF 610 requires that notice to be served on other known persons listed in the petition in the manner prescribed by the court, which may be notice by mail. [§ 633.559(3)]

4. HF 610 requires that notice to anyone other than the respondent state that the recipient may request to receive notice of the petition and of the proceedings, and the manner of such registration. [§ 633.559(4)]

## **II. Notification to Respondent of Right to Representation by Counsel and Guardianship and Conservatorship Powers**

### **A. Notification of respondent of right to representation by counsel**

1. HF 610 requires that an adult respondent be given written notice of the respondent's right to representation by counsel and the potential deprivation of the respondent's civil rights. HF 610 further provides that the written notice shall state that the respondent may be represented by respondent's own attorney rather than a court-appointed attorney. [§ 633.570(3)]
2. Notice is required to be served upon an adult respondent with the notice of the filing of the petition in accordance with section 633.635(2). [§ 633.570(3)]
3. Notice is required to be served on a minor respondent with the notice of the filing of the petition in accordance with section 633.559. [§ 633.570(3)]

## **B. Notification to respondent of guardian's powers**

1. In a proceeding for the appointment of a guardian for an adult, HF 610 requires that the adult be given written notice of the powers that a guardian may exercise without court approval. [§ 633.570] These powers include:

- Making decisions regarding the care, maintenance, health, education, welfare, and safety of the protected person except as otherwise limited by the court. [§ 633.635(2)(a)]
- Establishing the protected person's permanent residence except as limited by subsection 3. [§ 633.635(2)(b)]
- Taking reasonable care of the protected person's clothing, furniture, vehicle, other personal effects, and companion animals, assistive animals, assistance animals, and service animals. [§ 633.635(2)(c)]
- Assisting the protected person in developing maximum self-reliance and independence. [§ 633.635(2)(d)]
- Consenting to and arranging for medical, dental, and other health care treatment and services for the protected person except as otherwise limited by subsection 3. [§ 633.635(2)(e)]
- Consenting to and arranging for other needed professional services for the protected person. [§ 633.635(2)(f)]
- Consenting to and arranging for appropriate training, educational, and vocational services for the protected person. [§ 633.635(2)(g)]
- Maintaining contact, including through regular visitation with the protected person if the protected person does not reside with the guardian. [§ 633.635(2)(h)]
- Making reasonable efforts to identify and facilitate supportive relationships and interactions of the protected person with family members and significant other persons. The guardian may place reasonable time, place, or manner restrictions on communication, visitation, or interaction between the adult protected person and another person except as otherwise limited by subsection 3. [§ 633.635(2)(i)]
- Any other powers or duties the court may specify. [§ 633.635(2)(j)]

2. In a proceeding for the appointment of a guardian for an adult, HF 610 likewise requires that the adult be given written notice of the powers that a guardian may exercise only with court approval. [§ 633.570] These powers include:

- Changing, at the guardian's request, the protected person's permanent residence to a nursing home, other secure facility, or secure portion of a facility that restricts the protected person's ability to leave or have visitors, unless advance notice of the change was included in the guardian's initial care plan that was approved by the court. In an emergency situation, the court shall review the request for approval on an expedited basis. [§ 633.635(3)(a)]
- Consenting to the following:
  - (1) The withholding or withdrawal of life-sustaining procedures from the protected person in accordance with chapter 144A or 144D.
  - (2) The performance of an abortion on the protected person.
  - (3) The sterilization of the protected person. [§ 633.635(3)(b)]
- Denying all communication, visitation, or interaction by a protected person with a person with whom the protected person has expressed a desire to communicate, visit, or interact or with a person who seeks to communicate, visit, or interact with the protected person. A court shall approve the denial of all communication, visitation, or interaction with another person only upon a showing of good cause by the guardian. [§ 633.635(3)(c)]

### **C. Notification to respondent of conservator's powers**

1. HF 610 requires that an adult respondent receive written notification of the powers that a conservator may exercise without court approval pursuant to Iowa Code section 633.646. [§ 633.570(2)] However, HF 610 repealed section 633.646.

2. HF 610 requires that an adult respondent receive written notification of the powers that a conservator may exercise only with court approval. [§ 633.570(2)] These powers include:

- Invest the protected person's assets consistent with section 633.123. [633.642(1)]
- Make gifts on the protected person's behalf from conservatorship assets to persons or religious, educational, scientific, charitable, or other nonprofit organizations to whom or to which such gifts were regularly made prior to the conservator's appointment; or on a showing that such gifts would benefit the protected person from the perspective of gift, estate, inheritance, or other taxes. No gift shall be allowed which would foreseeably prevent adequate provision for the protected person's best interest. [633.642(2)]
- Make payments consistent with the conservator's plan described above directly to the protected person or to others for the protected person's education and training needs. [633.642(3)]
- Use the protected person's income or assets to provide for any person that the protected person is legally obligated to support. [633.642(4)]
- Compromise, adjust, arbitrate, or settle any claim by or against the protected person or the conservator. [633.642(5)]
- Make elections for a protected person who is the surviving spouse as provided in sections 633.236 and 633.240. [633.642(6)]
- Exercise the right to disclaim on behalf of the protected person as provided in section 633E.5. [633.642(7)]
- Sell, mortgage, exchange, pledge, or lease the protected person's real and personal property consistent with subchapter VII, part 6 of this chapter regarding sale of property from a decedent's estate. [633.642(8)]

**Appointment and role of court visitor (formerly known as guardian ad litem).**

1. HF 610 substitutes the term “court visitor” for the term “guardian ad litem.”<sup>4</sup> This was done to because lay people tend to confuse the terms “guardian ad litem” and “guardian.” This also was done because the term “guardian ad litem” is now used not only in connection with guardianship and conservatorship proceedings but also in other types of proceedings, with the role of the guardian ad litem varying depending on the type of proceeding.<sup>5</sup>

2. HF 610, unlike the current Iowa Code, expressly provides that the court may appoint a court visitor if such appointment would be in the best interests of the respondent. [§ 633.562(1)] The appointment of a court visitor is not mandatory; rather, the court has discretion as to whether to appoint a court visitor. The purpose of this 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.

3. HF 610 specifies that the court “*may appoint any qualified person as a court visitor.*” [§ 633.562(1)] Thus, the court may appoint persons with a variety of qualifications and backgrounds, depending upon the type of investigation needed by the court. In some cases, this may be an attorney, but in other cases, this may be a person with a background in a discipline other than law, such as social work, psychology, or the health sciences.

4. However, HF 610 prohibits an attorney appointed as a court visitor from serving as the attorney representing the respondent. [§ 633.562(2)] As stated previously, the court visitor and the attorney representing the respondent have different roles that may conflict.

5. HF 610 spells out in detail the duties of the court visitor, including the following:

*3. Unless otherwise enlarged or circumscribed by the court, the duties of a court visitor with respect to the respondent shall include all of the following:*

- a. Conducting an initial in-person interview with the respondent.*
- b. Explaining to the respondent the substance of the petition, the purpose and effect of the guardianship or conservatorship proceeding, the rights of the respondent at the hearing, and the general powers and duties of a guardian or conservator.*
- c. Determining the views of the respondent regarding the proposed guardian or conservator, the proposed guardian's or conservator's powers and duties, and the scope and duration of the proposed guardianship or conservatorship.*

*4. In addition, if directed by the court, the court visitor shall:*

- a. Interview the petitioner, and if the petitioner is not the proposed guardian or conservator, interview the proposed guardian or conservator.*
- b. Visit, to the extent feasible, the residence where it is reasonably believed that the respondent will live if the appointment of a guardian or conservator is made.*
- c. Make any other investigation the court directs including but not limited to interviewing any persons providing medical, mental health, educational, social, and other services to the respondent. [§ 633.562(3)&(4)]*

6. HF 610 requires the court to submit a written report to the court containing the following:

- a. A recommendation regarding the appropriateness of a limited guardianship for the respondent, including whether less restrictive alternatives are available.*
- b. A statement of the qualifications of the guardian together with a statement of whether the respondent has expressed agreement with the appointment of the proposed guardian or conservator.*
- c. Any other matters the court visitor deems relevant to the petition for guardianship or conservatorship and the best interests of the respondent.*

*d. Any other matters the court directs. [§ 633.562(5)]*

### **Emergency petition for appointment of temporary guardian or conservator**

1. The application for an emergency appointment of a guardian or conservator must include the following: the name and address of the respondent, the name and address of the proposed guardian or conservator and the reason the proposed guardian or conservator should be selected.
2. The existing Probate Code currently provides that “[a] temporary guardian may be appointed, but only after a hearing on such notice, and subject to such conditions, as the court shall prescribe.” [§ 633.558] However, the current provision does not state the substantive criteria appointment of a temporary guardian or conservator, nor does it state the procedures to be followed with respect to such an appointment.
3. HF 610 authorizes the court to appoint a temporary guardian or conservator on an emergency basis without the due process otherwise required for appointment of a guardian or conservator, but spells out the requirements for such a temporary emergency guardianship or conservatorship. [§ 633.569]
4. HF 610 provides that the court may issue an ex parte order appointing a temporary guardian only to prevent immediate or irreparable harm to the respondent, only when there is not sufficient time to file a petition and hold a hearing that otherwise would be required, and only if there is reason to believe that the basis for appointment of a guardian or conservator exists in accordance with other applicable provisions. [§ 633.569(3)]
5. While the court may establish a temporary emergency guardianship or conservatorship without due process that would otherwise be required, HF 610 requires that notice of a petition for the appointment must be given to the respondent, the respondent’s attorney, and any other person the court determines should receive notice. If an ex parte order is issued, an adult respondent may file a request for a hearing, and if the respondent is a minor, the minor, a parent with legal custody of a minor, or any other person with legal custody of the minor may file a written request for a hearing that must be held on an expedited basis.

**Court Ordered Professional Evaluation of Respondent**  
**A. Authorization and purpose of professional evaluation**

1. HF 610 contains a new provision authorizing the court to order a professional evaluation of a respondent concerning the respondent's decision-making capacity and functional abilities and limitations.
2. The purpose of the court ordered evaluation is to furnish information to the court that the court can use in determining whether a respondent has the requisite diminished decision-making capacity and functional limitations to satisfy the substantive criteria for appointment of a guardian or conservator, [§ 633.563(1)].
3. The results of the evaluation may also be relevant to the court's consideration of whether there is a less restrictive alternative to the appointment of a guardian or conservator, and, if the court appoints a guardian or conservator, the results of the evaluation may be relevant as to whether a limited guardianship or conservatorship may be more appropriate than a full guardianship or conservatorship.
4. In addition, the court ordered evaluation may provide information to the court that the court can use in determining whether to terminate or modify an existing guardianship or conservatorship, [§ 633.563(1)].

### **HF 610 background check requirement**

1. HF 610 requires for the first time that proposed guardians and conservators, other than financial institutions with Iowa trust powers, undergo an Iowa criminal history check and checks of the Iowa dependent adult abuse, child abuse, and sex offender registries, [§ 633.564(1)].

2. The background check requirement is directed at ensuring that judges have the information they need to determine the appropriateness of appointing a person as a guardian or conservator. The court has discretion as to whether to treat negative background check information as disqualifying for appointment of guardian or conservator. [§ 633.564(2)].

3. HF 610 directs the judicial branch in conjunction with the Departments of Public Safety and Human Services and the State Chief Information Officer to establish procedures for electronic access to the single contact repository, known as SING, for combined background checks, [§ 633.564(3)].

4. HF 610 specifies that the petitioner shall be responsible for the payment of the fee for a combined SING background check, [§ 633.664(4)]. The cost of a combined SING background check is \$15.00

See:

[https://ocio.iowa.gov/sites/default/files/documents/2018/09/sing\\_id\\_request\\_final\\_sep\\_t\\_2018\\_1.pdf](https://ocio.iowa.gov/sites/default/files/documents/2018/09/sing_id_request_final_sep_t_2018_1.pdf)

5. There are statutory limitations placed on the redissemination of child and dependent adult abuse information received as a result of SING background checks, [ §§ 235A.15 & 235B.8]

# BONDING PROVISION

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HF 610 amends the Probate Code to provide:

- The court *“shall not exempt a conservator, other than a financial institution with Iowa trust powers, from giving bond in a conservatorship unless the court finds that there is an alternative to a bond that will provide sufficient protection to the assets of the protected person. The conservator shall submit a plan for any proposed alternative to a bond for review and approval by the court.”*[§ 633.175(2)].
- The HF 610 amendment is designed to ensure that protected person do not suffer losses due to conservator malfeasance or misfeasance.

# Guardian's Reporting Requirements: Initial Care Plan

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F 610 contains the new requirement that upon appointment, a guardian for an adult must submit an initial care plan within 60 days of appointment for court review and approval.

HF 610 specifies that the initial care plan a “shall include but not be limited” to the following [§ 633.669(1)(a)]:

- *The current residence of the protected person and the guardian's plan for the protected person's living arrangements.* [§ 633.669(1)(a)(1)]
- *The guardian's plan for payment of the protected person's living expenses and other expenses.* [§ 633.669(1)(a)(2)]
- *The protected person's health status and health care needs, and the guardian's plan for meeting the protected person's needs for medical, dental, and other health care needs.* [§ 633.669(1)(a)(3)]
- *If applicable, the guardian's plan other professional services needed by the protected person.* [§ 633.669(1)(a)(4)]
- *If applicable, the guardian's plan for meeting the educational, training, and vocational needs of the protected person.* [§ 633.669(1)(a)(5)]
- *If applicable, the guardian's plan for facilitating the participation of the protected person in social activities.* [§ 633.669(1)(a)(6)]
- *The guardian's plan for facilitating contacts between the protected person and the protected person's family members and other significant persons.* [§ 633.669(1)(a)(7)]
- *The guardian's plan for contact with, and activities on behalf of, the protected person.* [§ 633.669(1)(a)(8)]

1. HF 610 prohibits the court from waiving the initial care plan report, the annual reports, and the final report that a guardian is required to submit to the court for review and approval [§633.669(1)].
2. The HF 610 provision prohibiting the court's waiver of the guardian's reporting requirements codifies existing court rule 7.8, which was issued in 2018 and became effective in 2019 [Rules of Probate Procedure, Rule 7.8(1)].

#### **Extensions of time for filing of reports**

1. HF 610 specifies the time within which guardian's annual report and final report must be filed, "*unless the court otherwise orders on good cause shown.*" [§633.669(1)(b) & (c)]
2. Existing court rule 7.8 similarly permits extensions of time for filing of a guardian's required "*only upon a showing of good cause.*" [Rules of Probate Procedure, [Rule 7.8(3)]]

#### **C. Enforcement of filing requirements**

1. Existing Court Rule 7.8 provides that the court may impose sanctions on a guardian, including the guardian's removal, if the guardian fails to make any required filing after notice and an opportunity to cure the failure [Rules of Probate Procedure. [Rule 7.8(4)]]

# Initial Financial Plan and Inventory

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1. HF 610 § 633.670(1) specifies that the plan and inventory must be filed with the court by the conservator within 90 days after appointment.
2. Within 2 days after filing the plan, the conservator must give notice of filing and a copy of the initial plan to:
  - the protected person;
  - the protected person's attorney;
  - the court visitor, if any; and
  - any other person as directed by the court.
3. Any person entitled to a plan has 15 days after filing of the plan to file any objections.
4. The court must review the plan at least 20 days after filing to either approve or revise.
5. The conservator must file an amended plan whenever:
  - There has been a significant change in circumstances, or
  - The conservator plans to deviate significantly from the plan.

HF 610 § 633.670(1) specifies that the initial plan “*shall include:*”

- A budget including
  - projected expenses,
  - projected resources,
  - estimated conservator fees per year, and
  - statement, or list, of the amount the conservator proposes to charge for each service;
  
- A statement by the conservator as to how the conservator plans to involve the protected person in decisions about the management of the protected person’s assets;
  
- If ordered by the court, steps the conservator plans to take to restore the protected person’s ability to manage his/her own financial affairs; and
  
- An estimate of the duration of the conservatorship.

## **Standby Appointment of Guardian of Minor Approaching Majority**

1. HF 591 provides that 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 for appointment of a guardian pursuant to § 633.553 (which states the basis for appointment of a conservator for an adult). It should be noted that petition must be filed in the **probate court** and that the court must find that the basis for opening a **guardianship for an adult** is satisfied in order to appoint a guardian on a standby basis. The petition, if granted, then takes effect on the minor's eighteenth birthday

## **New Law, House File 591**

### **Opening and Administration of Minor Guardianship**

#### **Appointment and Role of Counsel**

##### **A. For respondent minor**

1. HF 591 provides that upon the filing of a petition for the appointment of a guardian for a minor the court shall appoint an attorney for a minor, “*if the court determines that the interests of the minor are or may be inadequately represented.*” [§ 232D.303(1)]

2. HF 591 expressly clarifies the role of counsel for the minor. It states that the attorney representing a minor shall “*advocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable and advocate for the best interests of the minor if the wishes of the minor are not reasonably ascertainable.*” [§ 232D.303(2)]

**For minor's parent**

1. HF 591 provides that upon the filing of a petition for the appointment of a guardian for a minor, the court shall appoint an attorney for a parent

*“identified in the petition” if all of the following are true:*

*1. The parent objects to the appointment of a guardian for a minor.*

*2. 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]*

### **Appointment of a court visitor**

1. HF 591, unlike the current Probate Code, expressly provides that the court

“*may*” appoint a court visitor. [§ 232D.305 (1)] The

appointment of a court

visitor is not mandatory; rather, the court has discretion as to whether to

appoint a court visitor. 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.

## **Appointment of Temporary Guardian on Emergency Basis**

1. HF 591 authorizes the court to appoint a temporary guardian on an emergency basis without the due process otherwise required for appointment of a guardian, but spells out the requirements for such a temporary emergency guardianship. [§ 232D.309]
2. HF 591 provides that the court may issue an ex parte order appointing a temporary guardian only to prevent immediate or irreparable harm to the respondent, only when there is not sufficient time to file a petition and hold a hearing that otherwise would be required, and if there is reason to believe that the basis for appointment of guardian exists in accordance with section 232D.301 pertaining to the filing of a petition for a minor guardianship.  
[§ 232D.309 (3)]

# CASE LAW UPDATE

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## **IN THE MATTER OF THE GUARDIANSHIP OF L.O. and D.O.,**

No. 19-1976  
Filed October 21, 2020

Action to terminate guardianship, previous attempts unsuccessful. The DC denied this attempt but granted additional visitation which the guardians appealed.

The guardians contend we should reverse the grant of additional visitation for three reasons: (1) the mother's request for additional visitation was not properly pled; (2) the district court used the incorrect standard in modifying the mother's visitation; and (3) a GAL should have been appointed pursuant to Iowa Rules of Civil Procedure 1.211 and 1.212. We will address each in turn.

Viewing the mother's prayer for relief liberally and in light of the record as a whole, we think the district court was right to consider the mother's request for additional visitation

modification of visitation rights in child custody matters shall occur upon a showing of a significant (not substantial) change in circumstances since the previous order. It was appropriate for the district court to impose a "different, less demanding burden" when deciding whether to change the mother's visitation in this guardianship matter

The guardians claim Iowa Rules of Civil Procedure 1.211 and 1.212 required appointment of a GAL. Rule 1.212 applies only to parties who "appear[]" to be subject to rule 1.211." And rule 1.211 only applies to parties who are in danger of having a "judgment" entered "against" them.

But we do not believe an increase in a parent's visitation constitutes a "judgment . . . against" the child.

to whatever extent children need a "defense"—their "guardian" could provide it. And that is—in a matter of speaking—what happened here. The children's guardians resisted the mother's efforts to abolish the guardianship or, alternatively, obtain more visitation.

Note: Actions to terminate guardianships are equitable in nature.

... the MATTER OF the GUARDIANSHIPS OF J.W.,  
Robin Ulmer a/k/a [Robin Reisz](#), Guardian-Appellant.  
No. 19-1631  
Filed June 3, 2020

The statutory grounds for termination of a guardianship include a “determination by the court that the ... guardianship is no longer necessary. Termination of the guardianship “would be in [the child's] best interests.”

In the MATTER OF the GUARDIANSHIPS OF J.W. and J.W., Minor Children.  
Filed September 23, 2020. 2020 WL 5650736

Grandmother appeals the striking of her demand for a jury trial contained in her petition to establish involuntary guardianships for her son's children, who are in the legal custody of their mother.<sup>1</sup> Finding no error, we affirm.

“Actions ... for the involuntary appointment of guardians and conservators ... shall be triable in probate as law actions.” [Iowa Code § 633.33 \(2018\)](#).

All other pleadings and the trial of the cause shall be governed by the rules of civil procedure. The cause shall be tried as a law action, and either party shall be entitled to a jury trial if demand is made therefor as provided by the rules of civil procedure.

The grandmother demanded a jury trial. The district court found that calling a jury was “pointless” because the status of the proposed wards as minors was proved as a matter of law

The only issue properly submitted to a jury in this case is whether the proposed wards are minors or not. Here, it is undisputed that they are. The question of whether the parent is not a qualified or suitable caregiver is an aspect of the decisional act of appointing a guardian to be made by the court. Are the children to be left with their natural guardian, the mother, or placed with the potential legal guardian, the grandmother.

In the MATTER OF the GUARDIANSHIP and Conservatorship OF  
Diane Florence NORELIUS  
Filed March 4, 2020 No. 19-1494

Marcia Losh was appointed as the ward's guardian in May 2018. In June 2019, Losh filed a request for an award of fees. appellants argue Losh was not entitled to fees incurred before she was appointed guardian.

In proceedings to establish a guardianship or conservatorship, the costs ... shall be assessed against the respondent or the respondent's estate unless the proceeding is dismissed either voluntarily or involuntarily, in which case fees and costs may be assessed against the petitioner for good cause shown.

In the MATTER OF the GUARDIANSHIP and Conservatorship OF  
B.Z.,

Filed August 5, 2020 2020 WL 4499037

Petitioner must prove the guardianship and conservatorship are necessary and must do so by clear and convincing evidence. *Id.* (citing [Iowa Code section 633.551\(1\), \(2\)](#)). That standard means there is no serious or substantial doubt about the correctness of a particular conclusion the court draws from the evidence. We begin with the presumption the proposed respondent is competent.

The record includes substantial evidence that B.Z. cannot provide for her own care and safety. Thus, we agree with the district court that B.Z. needs a guardian.

Lastly, in proceedings to establish a guardianship or conservatorship, “the court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the” respondent. Iowa Code § 633.551(4); see *In re Guardianship of Hedin*, 528 N.W.2d 567, 579 (Iowa 1995) (“[T]he court must consider the availability of third-party assistance to meet a [respondent's] need ... if credible evidence of such assistance is adduced from any source.”). But neither party has the burden to produce such evidence.