
REFORMING IOWA’S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: MINOR GUARDIANSHIPS

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with

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ABSTRACT

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This Article is the second in a series of symposium articles pertaining to the Iowa guardianship and conservatorship system and the Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force (Task

Force).¹ The Task Force, which was created in 2015, had 72 members throughout the state who were representative of the multiple stakeholders in the Iowa guardianship and conservatorship system.²

They included: (1) judges and other judicial branch personnel, (2) attorneys, (3) guardians and conservators, (4) financial institutions

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1. The first article of the symposium provided an overview of the guardianship and conservatorship system and the Guardianship and Conservatorship Reform Task Force. See Bruce Zager, Josephine Gittler & Jerry Foxhoven, *Reforming Iowa's Guardianship and Conservatorship System: An Introduction*, DRAKE L. REV. DISCOURSE, Mar. 2018, at 101 (first article of the symposium). The final Task Force Report sets forth the Task Force recommendations with comments. See IOWA GUARDIANSHIP & CONSERVATORSHIP REFORM TASK FORCE, REFORMING IOWA'S GUARDIANSHIP AND CONSERVATORSHIP SYSTEM: FINAL REPORT 5–7 (2017) [hereinafter TASK FORCE REPORT].

2. TASK FORCE REPORT, *supra* note 1, at 3.

and bonding companies, (5) advocates for individuals with disabilities, mental illnesses and brain injuries, (6) advocates for older individuals, (7) staff of state and local agencies and programs, (8) clinicians and service providers, and (9) legal academics.³

The final Task Force Report, submitted to the Iowa Supreme Court in 2017, contains 272 recommendations that furnish a roadmap for future directions of the Iowa guardianship and conservatorship system and benchmarks for measuring needed improvements in the system.⁴

This Article describes the Task Force recommendations regarding minor guardianships. This Article also describes Senate Judiciary Committee Study Bill 3187 (S.S.B. 3187) implementing the legislative recommendations with respect to minor guardianships. This Bill, which is contained in the Article's appendix, was introduced but not acted upon during the 2018 Iowa General Assembly Session.⁵

The Task Force recommendations and S.S.B. 3187 are directed at ensuring vulnerable minor children receive needed care and protection. They also are directed at ensuring the constitutionally protected rights of parents with respect to their children are protected. In addition they are designed to bring the legal framework for minor guardianships into conformance with existing statutory and case law.

I. THE GUARDIANSHIP AND CONSERVATORSHIP SYSTEM AND THE PROFILE OF MINOR GUARDIANSHIP CASES

Iowa, similar to other states, has a guardianship and conservatorship system that the judicial branch of government administers.⁶ Court-appointed guardians are authorized to make decisions on behalf of persons under guardianship regarding their care, and court-appointed conservators are authorized to make decisions on behalf of persons under conservatorship regarding their property and finances.⁷ Guardianships and conservatorships may be established for minors and adults.⁸

As of 2016, there were 22,754 persons subject to guardianship and

3. *Id.* at 3–4.

4. *See id.* at 11–159.

5. *See infra* App. at A:1.

6. *See* Zager, Gittler & Foxhoven, *supra* note 1, at 102.

7. *Id.* at 101.

8. *Id.*

conservatorship in Iowa.⁹ While reports of the state court administrator provide the total number of existing guardianships and conservatorship cases, these reports do not distinguish between minor and adult cases.¹⁰ Because of the lack of data about these cases, the Institute on Guardianship and Conservatorship at the University of Iowa College of Law conducted the Iowa Guardianship and Conservatorship Study (Study) which reviewed more than 4,000 case files from 10 counties in five judicial districts throughout the state.¹¹

The Study disclosed that the minor guardianships and conservatorships made up 36 percent of all of the guardianship and conservatorship cases reviewed.¹² The largest category of minor guardianship and conservatorship cases—65 percent—were stand-alone guardianships; the next largest category of these cases—26 percent—were stand-alone conservatorships; and 9 percent of these cases involved both guardianships and conservatorships.¹³

In 82 percent of the minor guardianship cases reviewed, a parent's inability or unwillingness to carry out their parental responsibilities led to the appointment of a guardian; in 8 percent of the cases, there was some other reason for the guardianship; and in the remainder of the cases, the reason for the establishment of a guardianship could not be determined.¹⁴

The Study found most guardians—81 percent—were adult relatives.¹⁵ Only 14 percent of these guardians were represented by attorneys.¹⁶

II. JURISDICTION OVER MINOR GUARDIANSHIP CASES

The Task Force recommendations and S.S.B. 3187 call for the transfer of jurisdiction over minor guardianship cases from the probate court to the juvenile court, and their implementation would create a new jurisdictional

9. TASK FORCE REPORT, *supra* note 1, at 2 (citing E-mail from David K. Boyd, State Court Adm'r, to Josephine Gittler, Task Force Reporter (July 7, 2017) (on file with Josephine Gittler)).

10. *Id.* at 133 (citing E-mail from David K. Boyd to Josephine Gittler, *supra* note 9).

11. *Id.* app. A at A:6–A:10.

12. *Id.* app. A at A:14.

13. Memorandum from Nicole Meir, IT Support Consultant, University of Iowa College of Law, to Josephine Gittler, Task Force Reporter (Mar. 8, 2018).

14. TASK FORCE REPORT, *supra* note 1, app. A at A:16.

15. Memorandum from Nicole Meir, *supra* note 13.

16. *Id.*

category in juvenile court for minor guardianship proceedings.¹⁷

The probate court functions within the district court, but is not a specialized court.¹⁸ District court judges and district court associate judges, who are appointed to serve in counties within one of eight judicial districts, hear a wide array of criminal, civil, and probate matters including guardianship cases.¹⁹ Polk County is the only county which has a full-time district associate probate judge with authority limited to probate matters.²⁰

The juvenile court functions within the district court, but unlike the probate court, is a specialized court.²¹ Juvenile court judges preside exclusively or primarily in juvenile court proceedings in one or more counties within a particular district.²²

The juvenile court has jurisdiction over “children in need of assistance” (CINA) proceedings.²³ CINA is the term used in the Iowa Code to refer to children who are the victims of parental abuse, neglect, and abandonment.²⁴ The court’s dispositional options in a CINA case include an out-of-home placement for the child, which may entail a guardianship,²⁵ and if a guardianship is established, the juvenile court may close the CINA case by transferring jurisdiction of the guardianship to the probate court.²⁶ The

17. TASK FORCE REPORT, *supra* note 1, at 120; *see infra* App. at A:2–A:3.

18. IOWA CODE ANN. § 633.10 (West 2017).

19. IOWA CODE ANN. §§ 602.6201, 602.6306 (West 2017).

20. TASK FORCE REPORT, *supra* note 1, at 118; *see* IOWA CODE ANN. § 633.20B(1)–(2) (West 2017).

21. IOWA CODE ANN. § 602.7101 (West 2017); *Juvenile Court and Procedure*, IOWA JUDICIAL BRANCH, <https://www.iowacourts.gov/iowa-courts/juvenile-court> (last visited May 18, 2018).

22. IOWA CODE ANN. §§ 602.6306, 602.7101.

23. *Juvenile Court and Procedure*, *supra* note 21. The Iowa Code, Chapter 232 Division III governs “child in need of assistance” (CINA) proceedings. IOWA CODE ANN. §§ 232.61–232.108 (West 2017).

24. For the statutory definition of CINA, see IOWA CODE ANN. § 232.2(6) (West 2017). Abuse of children by parents and other caretakers including guardians is a large and growing problem in Iowa. Based on a review of data from the Iowa Department of Human Services, the Des Moines Register reported that “[c]onfirmed child abuse in Iowa skyrocketed 26 percent from 2016 to 2017, the most dramatic one-year spike in at least a generation.” Lee Rood, *Confirmed Child Abuse in Iowa is Skyrocketing. Here's Why*, DES MOINES REGISTER, (May 29, 2018), <https://www.desmoinesregister.com/story/news/investigations/readers-watchdog/2018/05/29/iowa-child-abuse-natalie-finn-sabrina-ray-deaths-huge-spike-confirmed-abuse-cases/641048002/>.

25. IOWA CODE ANN. § 232.101A(1) (West 2017).

26. IOWA CODE ANN. § 232.101A(2) (West 2017).

juvenile court also has jurisdiction over termination of parental rights proceedings.²⁷

A major reason for giving the juvenile court jurisdiction over minor guardianships is the historical roots of juvenile courts in the *parens patriae* doctrine.²⁸ This doctrine can be traced back to fourteenth century England, and the Crown's assertion of power to protect those unable to protect themselves.²⁹ A concomitant of the doctrine is a proactive protective stance on the part of the juvenile court towards vulnerable children, such as those subject to guardianship proceedings.³⁰ It should be noted that the probate courts also have their roots in the *parens patriae* doctrine.³¹ However, a proactive protective stance "is somewhat at odds with the traditional passive stance of probate courts[.]" which do not act "until some interested person invokes [their] power to secure resolution of a matter."³²

One manifestation of the proactive protective stance of the juvenile court is its one judge/one family case management approach under which one judge is assigned to follow a specific case over time.³³ In contrast, it is typical for multiple district or associate court judges to be involved in a given probate case,³⁴ and as a result, these judges "must be serially informed of the facts and circumstances of the case during its pendency."³⁵ The juvenile court's one judge/one family approach fosters continuity and consistency in the handling of a case, which in turn fosters informed judicial decision-making and efficiency in processing the case.³⁶

The proactive protective stance of the juvenile court and its one judge/

27. IOWA CODE ANN. §§ 232.109-.121 (West 2017) governs termination of parental rights proceedings. See *Juvenile Court and Procedure*, *supra* note 21.

28. See TASK FORCE ON JUVENILE DELINQUENCY, PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, JUVENILE DELINQUENCY AND YOUTH CRIME: REPORT ON JUVENILE JUSTICE AND CONSULTANTS' PAPERS 2 (1967).

29. See Lawrence B. Custer, *The Origins of the Doctrine of Parens Patriae*, 27 EMORY L.J. 195, 195-96 (1978).

30. TASK FORCE REPORT, *supra* note 1, at 89.

31. NAOMI KARP & ERICA WOOD, AARP PUB. POLICY INST., GUARDIANSHIP MONITORING: A NATIONAL SURVEY OF COURT PRACTICES 31 (2006).

32. *Id.*

33. TASK FORCE REPORT, *supra* note 1, at 121.

34. *Id.* at 119.

35. *Id.* (quoting IOWA CIVIL JUSTICE REFORM TASK FORCE, REFORMING THE IOWA CIVIL JUSTICE SYSTEM: REPORT OF THE IOWA CIVIL JUSTICE REFORM TASK FORCE 23 (2012)).

36. *Id.* at 118-19, 121.

one family case management approach is of particular significance in terms of the judicial monitoring of minor guardianships. After a guardian is appointed for a minor, the court has an ongoing responsibility to monitor the guardianship to ensure the accountability of the minor's guardian and the minor's well-being and protection.³⁷ However, the Task Force found serious deficiencies in the probate court's monitoring of minor guardianships.³⁸ The Task Force concluded the one judge/one family approach would promote the needed monitoring of minor guardianship cases.³⁹

Another major reason for granting the juvenile court jurisdiction over minor guardianships is the expertise juvenile court judges have in dealing with the kind of issues presented in most minor guardianship cases.⁴⁰ As previously noted, the alleged failure of parents to fulfill their parental responsibilities is at issue in most minor guardianship cases,⁴¹ and such failures are likewise at issue in CINA and termination of parental rights cases.⁴² Due to the extensive experience of juvenile court judges with CINA and termination of parental rights cases, they have the requisite expertise to deal with these issues in the minor guardianship context.

37. *Id.* at 89, 121.

38. *Id.* at 121–22. A district court judge describes a minor guardianship case illustrative of the deficiencies in court monitoring as follows:

A seven-year-old boy had apparently been adjudicated a CINA. The juvenile court order designated an older sister to serve as guardian; the case was transferred to the district court. A district court order was entered without a further hearing appointing the sister as the guardian, and the juvenile court case was closed.

The required annual reports were not filed for several years, and the delinquency notices sent to the guardian were returned because there was no forwarding address. I called the Department of Human Services (DHS) but was told that DHS had “no idea” where the child was. DHS followed up and found that the child's record had been sent to Chicago, but further investigation indicated that the child had not been enrolled in any Chicago school.

There was no ongoing monitoring of the guardianship to ensure that the child's [needs] were being met.

Telephone Interview with Cynthia Danielson, Senior Judge, Iowa Judicial District 8 (May 9, 2016).

39. TASK FORCE REPORT, *supra* note 1, at 121.

40. *Id.* at 120–21.

41. *See supra* note 14 and accompanying text.

42. *See supra* note 24 and accompanying text.

Still another major reason for granting the juvenile court jurisdiction over minor guardianship cases is to respond to problems stemming from the existing overlap between these cases and CINA and termination of parental rights cases.⁴³ Thus, there are cases where the initiation of either a minor guardianship proceeding in probate court or a CINA proceeding in juvenile court may be possible.⁴⁴ Task Force members concluded that juvenile judges are best able to determine in such cases which proceeding is most appropriate and should have precedence.⁴⁵

A related but distinct type of overlapping problem may be characterized as the left hand not knowing what the right hand is doing. A judge hearing a probate court minor guardianship matter may be unaware that there is or has been a related juvenile court case, and conversely, a judge hearing a juvenile court CINA or termination of parental rights matter may be unaware there is or has been a related probate court minor guardianship case.⁴⁶ The Task Force concluded this kind of problem would be less likely to occur if the juvenile court had jurisdiction of minor guardianship cases as well as CINA and termination of parental rights cases.⁴⁷

III. CRITERIA FOR MINOR GUARDIANSHIPS

A. *Specific Statutory Criteria*

The current Iowa Probate Code provisions applicable to the appointment of a guardian for a minor state that there must be proof of the

43. TASK FORCE REPORT, *supra* note 1, at 120–21.

44. For example, there are situations in which a parent seeks to avoid a CINA proceeding in juvenile court through the filing of a guardianship petition by a grandparent or other relative in probate court. An attorney, who represents parties in CINA proceedings, described the following illustrative case:

A newborn was found to have been exposed to drugs in utero; a report was made to the Department of Human Services (DHS); and a CINA proceeding in juvenile court was initiated. The parents were unable to care for the baby because of their substance abuse. In connection with the CINA proceeding, the paternal grandmother worked with DHS in order to qualify as an out of home placement for baby. However, the maternal grandmother filed a guardianship petition in probate court and was appointed as guardian for the baby. The CINA case proceeded and the guardianship ultimately was terminated.

E-mail from Diane Dornburg, Associate Attorney, Carney & Appleby Law, to Josephine Gittler, Task Force Reporter (Mar. 26, 2018) (on file with Josephine Gittler).

45. TASK FORCE REPORT, *supra* note 1, at 121.

46. *See, e.g.*, case described *supra* note 44.

47. *See* TASK FORCE REPORT, *supra* note 1, at 120.

“necessity for the appointment of a guardian” and proof that the appointment is in the minor’s “best interests.”⁴⁸ These provisions further state that a minor’s parents, “if qualified and suitable,” ought to be given “[p]reference” in a guardianship proceeding.⁴⁹ The generality of these provisions furnishes little guidance as to what constitutes sufficient grounds for establishing a minor guardianship, which is especially problematic in cases where parents object to the guardianship.⁵⁰

Accordingly, the Task Force recommendations and S.S.B. 3187 delineate specific substantive criteria for the appointment of a guardian.⁵¹ The principal focus of these criteria is: (1) the establishment of a minor guardianship without parental consent, and (2) the establishment of a minor guardianship with parental consent.⁵²

B. Guardianships with Parental Consent

It appears that most of the minor guardianships now in effect originally were treated as guardianships to which parents had consented.⁵³ The Task Force recommendations and S.S.B. 3187 would continue to authorize

48. IOWA CODE ANN. §§ 633.552(4), 633.556(1) (West 2017).

49. IOWA CODE ANN. § 633.559 (West 2017).

50. The current Probate Code provisions are arguably unconstitutionally vague in violation of the Due Process Clause of the Fifth and Fourteenth Amendments. The rationale for the void-for-vagueness doctrine is that statutes must be sufficiently specific to give persons fair warning of proscribed conduct and to prevent arbitrary and discriminatory law enforcement. *See, e.g.,* *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972); *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1960). While the void-for-vagueness doctrine is most often invoked in challenges to penal statutes, it can also be invoked to challenge civil statutes. *See Sessions v. Dimaya*, 138 S. Ct. 1204, 1228–29 (2018) (Gorsuch, J. concurring). For example, in *Alsager v. District Court of Polk County*, a federal district court invalidated the Iowa termination of parental rights statute, a civil statute, on the ground that it was unconstitutionally vague. 406 F. Supp. 10, 21 (S.D. Iowa 1975), *aff’d per curiam on other grounds*, 545 F.2d 1137 (8th Cir. 1976). While the establishment of a minor guardianship does not result in termination of parental rights, its establishment does interfere with constitutionally protected parental rights regarding the custody and control of the upbringing of a child. *See infra* text accompanying note 60.

51. TASK FORCE REPORT, *supra* note 1, at 40–43 (Recommendations 2.4–2.9); *see infra* App. § 9, at A:2.

52. *See infra* App. § 9, at A:2–A:3.

53. For example, an attorney who has been involved in 44 minor guardianship cases in some capacity in the last five years observed that the parents agreed to the guardianship in all these cases. Telephone Interview with Frank Tenuta, Attorney (Mar. 17, 2018).

guardianships with parental consent if certain requirements are met.⁵⁴

In developing recommendations for guardianships with parental consent, Task Force members had two main concerns. One concern was that a parent's consent to a guardianship sometimes is not knowing and voluntary.⁵⁵ The other concern was that guardians and parents often have differing expectations and assumptions as to their respective responsibilities, parent-child contact during the guardianship, and the duration of the guardianship.⁵⁶ These differing expectations and assumptions produce

54. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 40–43 (Recommendations 2.4–2.9); *see infra* App. § 9, at A:2–A:3.

55. TASK FORCE REPORT, *supra* note 1, at 42. It was reported to the Task Force “that parents were sometimes led to believe that a Juvenile Court child in need of assistance petition would be filed in Juvenile Court unless they consented to a guardianship.” *Id.*

An attorney with extensive experience with minor guardianships describes the following illustrative case:

Mom and dad were 17 years of age when HLW was born. Mom, dad and HLW moved in with the paternal grandparents. After mom and dad split up, mom and HLW continued to live with the grandparents. The court appointed the grandparents as guardian for HLW with consent of both parents. Several years later, mom sought the termination of the guardianship. In a statement to her attorney, mom explained what had led her to consent to the guardianship.

A couple months after we had split up dad's parents started talking to me about temporary guardianship until I get on my feet I told them no. They then started telling me that DHS was going to come in and take my child if I didn't have a stable home of my own. *** I got scared because I didn't want DHS involved and for HLW to be taken to a foster home or something. I was told it was a temporary guardianship and I could get him back when I got on my feet. This was not the case because I have asked throughout the years to get HLW back.

Email from Diane Dornburg, *supra* note 44.

56. As an attorney with extensive experience in minor guardianship cases observed:

In my experience, it is certainly a common occurrence that a young mother or a mother with a drug problem or some other problem agreed to guardianship after being told by the child's grandparent that she really couldn't take care of the child right now and that the guardianship was just temporary. There is no discussion of visitation during the guardianships. The mother thinks she will have no trouble getting her child back when she gets her act together, and then she finds out that this is not true.

Telephone Interview with Frank Tenuta, *supra* note 53. *See also* case described *supra* note 44.

conflicts between guardians and parents and can generate litigation in which parents seek to terminate the guardianship.⁵⁷

In response to these concerns, the Task Force recommendations and S.S.B. 3187 set forth several requirements intended to ensure parental consent is truly consensual and that parents and proposed guardians understand what the effect of the guardianship will be. These requirements include: (1) the filing of an affidavit with the guardianship petition by the parents, or parent, verifying they knowingly and voluntarily consent to the guardianship; (2) a finding by the court the parental consent was knowing and voluntary; (3) the filing of a guardianship agreement by the parents and the proposed guardian stating their respective responsibilities, any arrangements for parent-child contact, and the duration of the agreement if known; and (4) the court's approval of the agreement and its incorporation by reference into its order granting the petition.⁵⁸

C. Guardianships Without Parental Consent

Underlying the Task Force recommendations relating to minor guardianships without parental consent are complex federal and state constitutional issues. The United States Supreme Court has recognized that parents have a constitutionally protected right to the custody of their children and to the control of their upbringing, and at the same time, the Court has recognized that the state has the power to coercively intervene in the parent-child relationship to protect the welfare of children.⁵⁹ It is unclear what kind of showing must be made for it to be constitutionally permissible for a court to deprive a parent of the custody of their children and the control of their children's upbringing through the establishment of a guardianship without their consent.⁶⁰

57. See, e.g., *In re Guardianship of Stewart*, 369 N.W.2d 820 (Iowa 1985) (describing how the divorce of a young couple resulted in a years-long temporary guardianship that the father was eventually able to terminate in order to have full custody of his daughter).

58. S.S.B. 3187, 87th Gen. Assemb., Reg. Sess. (Iowa 2018); TASK FORCE REPORT, *supra* note 1, at 40-41; see *infra* App. § 9, at A:2. The requirements of the Task Force recommendations and S.S.B. 3187 are modeled on the Vermont minor guardianship statute, and they are consistent with the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. VT. STAT. ANN. tit. 14, § 2626 (West 2018); UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 201 (UNIF. LAW COMM'N 2017).

59. For a summary of the relevant U.S. Supreme Court decisions, see ERWIN CHEMERINKSY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 836-37, 843-45 (5th ed. 2015).

60. A key U.S. Supreme Court decision is *Troxel v. Granville*, 530 U.S. 57 (2000).

Task Force members did not reach a consensus as to minor guardianships without parental consent. Accordingly, the Task Force recommendations present two options in this regard. One option would not permit nonconsensual guardianships, whereas the other would permit them.⁶¹

The two options represent differing positions as to the constitutionality of nonconsensual minor guardianships. Underlying the first option is the position that Iowa Supreme Court decisions concerning the constitutionality of grandparent visitation statutes dictate the conclusion that nonconsensual minor guardianships would violate constitutionally protected parental rights.⁶² Underlying the second option is the position that such guardianships would not violate such rights if it is shown by clear and convincing evidence that there has been a serious failure by the parent to provide the child with needed care and protection and that a guardianship is in the child's best interest.⁶³

The two options also reflect differing views as to what the relationship should be between minor guardianship cases on the one hand and CINA and termination of parental rights cases on the other hand. The first option under which a minor guardianship without parental consent would not be permitted reflects the view that the only possible alternative in cases where it is alleged a parent is not providing needed care and protection to a minor

In *Troxel*, the issue was the constitutionality of a broad state statute which authorized "any person" to petition the court "at any time" for child visitation and authorized the court to grant the petition over parental objection if it was in the "child's best interests." *Id.* at 60. The Supreme Court upheld the judgment of the state supreme court invalidating the state statute. *Id.* at 63. However, there were six separate opinions rather than a majority opinion in *Troxel*, and *Troxel* has created more confusion than clarity as to when a state can interfere with a parent's constitutionally protected parental rights. See, e.g., CHEMERINSKY, *supra* note 59, at 845–47; David D. Meyer, *Lochner Redeemed: Family Privacy After Troxel and Carhart*, 48 UCLA L. REV. 1125, 1147–48 (2001).

The Iowa Supreme Court has handed down several decisions where the issue was the constitutionality of successive Iowa grandparent visitation statutes. See *Spiker v. Spiker*, 708 N.W.2d 347, 350 (Iowa 2006); *Lamberts v. Lillig*, 670 N.W.2d 129, 130 (Iowa 2003); *In re Marriage of Howard*, 661 N.W.2d 183, 185 (Iowa 2003); *Santi v. Santi*, 633 N.W.2d 312, 313–14 (Iowa 2001). In *Spiker*, the Iowa Supreme Court reiterated its previous holdings that "the parental caretaking interest, or the right to direct the direct the upbringing of one's children, is fundamental" and that "[t]herefore state action infringing on that interest must be narrowly tailored to serve a compelling state interest." 708 N.W.2d at 351–52 (quoting *Santi*, 633 N.W.2d at 317, 318).

61. TASK FORCE REPORT, *supra* note 1, at 42 (Recommendation 2.9).

62. See cases cited *supra* note 59.

63. TASK FORCE REPORT, *supra* note 1, at 42–43 (Recommendation 2.9).

child should be a CINA adjudication or the termination of parental rights.⁶⁴ The second option under which a nonconsensual guardianship would be permitted reflects the view that such a guardianship may constitute an appropriate, less drastic alternative to a CINA adjudication or the termination of parental rights if a requisite showing is made that the parent has failed to provide the child with needed care and protection and a guardianship is in the child's best interests.⁶⁵ In addition, it reflects the view that nonconsensual minor guardianships may be appropriate when grounds for a CINA adjudication or termination of parental rights are lacking, but the requirements for a guardianship are met.⁶⁶

S.S.B. 3187 specifically authorizes the court to establish a minor guardianship without parental consent if it is shown by clear and convincing evidence that the proposed guardian has been functioning as a *de facto* guardian; this showing is made when "[t]here has been a demonstrated lack of consistent parental participation" in the child's life and a guardianship is in the child's best interests.⁶⁷ S.S.B. 3187 also specifically authorizes the court

64. *See id.*

65. *See id.* For an example of a case in which a court determined a guardianship was preferable to a termination of parental rights, see *In re B.T.*, 894 N.W.2d 29, 34–35 (Iowa Ct. App. 2017).

66. An attorney with extensive experience in minor guardianship cases described the following illustrative case:

Mother and her two young children moved in with grandma. Mother began leaving children with grandma frequently for long periods of time and essentially abdicating her parental responsibilities. She was not working or going to school. She began using illegal drugs but refusing to go to treatment. Grandma called DHS [Department of Human Services] and was told that because children were not at risk in her care, they would not be able to do anything, i.e., they would not be able to file a CINA petition. Grandma filed a guardianship petition without the consent of the mother and was appointed guardian.

I think the reality is that not every family in this situation can get DHS involved or actually wants DHS involvement. Grandma didn't need services (or DHS looking over her shoulder) to take care of the children, and the mother was refusing services and others' help although it was frequently offered. Grandma just needed the legal authority to prevent mother from removing the children from a safe environment and taking them someplace unsafe.

E-mail from Evelyn Ocheltree, Attorney, to Josephine Gittler, Task Force Reporter (June 7, 2017) (on file with Josephine Gittler).

67. S.S.B. 3187, 87th Gen. Assemb., Reg. Sess. (Iowa 2018); *see infra* App. § 10(1), at A:3. This section is derived from the Maine guardianship statute, the constitutionality of which the Maine Supreme Court upheld. ME. STAT. tit. 18-A, § 5-204(c) (2012); *In re*

to establish a nonconsensual guardianship if it is shown by clear and convincing evidence that the parent is not willing or able to exercise the powers the court would grant to the guardian and the guardianship is in the child's best interests.⁶⁸

IV. GUARDIANSHIP PROCEEDINGS

The Task Force recommendations and S.S.B. 3187 would bring significant changes in the statutory framework for minor guardianship proceedings. Among the notable changes would be those related to guardianship petitions, counsel for the minor and counsel for the minor's parents, the court visitor (formerly known as the guardian ad litem), and guardianship hearings.⁶⁹ While the Iowa Probate Code provisions applicable to adult guardianship proceedings are largely applicable to minor guardianship proceedings, the Task Force recommendations and S.S.B. 3187 differentiate between these proceedings because of their differing nature.⁷⁰

A. Guardianship Petitions

The Iowa Probate Code currently has several requirements as to the contents of a guardianship petition. One requirement is that the petition must state the appointment of a guardian is in the best interests of the proposed ward.⁷¹ The Task Force recommendations and S.S.B. 3187 additionally provide that the petition must state the factual basis for the petition.⁷²

The Code also provides that the petition must list the proposed ward, the proposed guardian, and any person or institution "having the care, custody or control of the proposed ward."⁷³ In accordance with the Task Force recommendations, S.S.B. 3187 specifies that any legal custodian or adult who has "primary care of the minor or with whom the minor has lived

Guardianship of Chamberlain, 118 A.3d 229, 242 (Me. 2015).

68. S.S.B. 3187; *see infra* App. § 10(1), at A:3. This provision is derived from the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act. UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 201(b)(3) (UNIF. LAW COMM'N 2017).

69. S.S.B. 3187; *see infra* App. §§ 11, 13–16, at A:3–A:5.

70. *See supra* Part II.

71. IOWA CODE ANN. § 633.552(4) (West 2017).

72. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 45; *see infra* App. §11, at A:4.

73. IOWA CODE ANN. § 633.552(1), (3), (5) (West 2017).

for at least six months prior to the filing of the petition” should be listed.⁷⁴

The Iowa Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), which applies to minor guardianships, has more detailed and extensive requirements regarding the information to be furnished to the court in the first pleading or in an attached affidavit than the aforementioned Probate Code provisions.⁷⁵ However, there appears to be significant noncompliance with the UCCJEA requirements in minor guardianship cases.⁷⁶ Therefore, the Task Force recommendations and S.S.B. 3187 incorporate by reference the applicable UCCJEA requirements.⁷⁷

B. Counsel for Minor, Counsel for Minor's Parents, and Court Visitors

The Task Force developed a series of interrelated recommendations regarding counsel for minors in guardianship proceedings, counsel for parents of minors, and court visitors in guardianship proceedings.

1. Counsel for the Minor

The Task Force recommended the court be required to appoint counsel to represent the minor unless the minor is already represented by retained counsel.⁷⁸ However, S.S.B. 3187 provides that the court may appoint counsel if it determines the best interests of the minor are, or may be, otherwise inadequately represented.⁷⁹ The S.S.B. 3187 provision is similar to, albeit somewhat more specific than, the existing Iowa Probate Code provision, stating the court shall determine if “under the circumstances of the case” the minor “is entitled to representation.”⁸⁰

74. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 45–46; *see infra* App. § 11, at A:4.

75. IOWA CODE ANN. § 598B.209(1) (West 2017).

76. A representative sample of minor guardianship cases reviewed by the Iowa Guardianship and Conservatorship Study revealed that only 5 percent of petitions were in compliance with the UCCJEA. Memorandum from Maura Cook to Josephine Gittler, Task Force Reporter (April 30, 2017) (on file with Josephine Gittler). Task Force members also reported noncompliance with the UCCJEA.

77. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 45–46; *see infra* App. § 11, at A:3–A:4.

78. TASK FORCE REPORT, *supra* note 1, at 49.

79. S.S.B. 3187; *see infra* App. § 13, at A:4.

80. IOWA CODE ANN. § 633.561(1)(b) (West 2017). The Uniform Guardianship and Protective Proceedings Act and the National Probate Court Standards, like S.S.B. 3187, do not require the court to appoint counsel in every case. UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 204 (UNIF. LAW COMM'N 2017); NAT'L PROB. COURT STANDARDS § 3.5.4 (NAT'L COLL. PROB. COURT

The rationale for this approach is that there are cases in which counsel may be unnecessary and the appointment of counsel would result in unnecessary charges on counties for attorney fees.⁸¹ Examples of cases in which counsel may not be necessary are uncontested cases and cases where there is no conflict of interest between the petitioner, the minor, and the proposed guardian.⁸²

A Task Force recommendation provides that the role of the counsel representing the minor is to advocate for the wishes of the minor to the extent those wishes are reasonably ascertainable.⁸³ The recommendation further provides that if the minor's wishes are not reasonably ascertainable, counsel for the minor should advocate for the least restrictive option consistent with the minor's interests.⁸⁴

2. Counsel for the Minor's Parents

A minor's parents currently have no statutory right to appointment of counsel.⁸⁵ Given that establishment of a guardianship interferes with a parent's right to child custody and to the control of the child's upbringing, the Task Force recommendations and S.S.B. 3187 would authorize the court to appoint counsel if two conditions are satisfied.⁸⁶ The first condition is that the parents object to the proposed guardianship.⁸⁷ It is anticipated this condition will be satisfied in relatively few minor guardianship cases because most of these cases involve parental consent.⁸⁸ The second condition is that the parents are unable to pay for counsel.⁸⁹

3. Court Visitor

The Task Force recommendations and S.S.B. 3187 provide that the court should be authorized to appoint a court visitor to serve as the court's

JUDGES 2013).

81. See NAT'L PROB. COURT STANDARDS, § 3.5.4 cmt. at 85–86.

82. *Id.*

83. TASK FORCE REPORT, *supra* note 1, at 49.

84. *Id.*

85. See TASK FORCE REPORT, *supra* note 1, at 51–52.

86. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 52; see *infra* App. § 14, at A:4.

87. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 52; see *infra* App. § 14, at A:4.

88. See *supra* text accompanying note 56.

89. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 52; see *infra* App. § 14, at A:4.

eyes and ears and furnish the court with information relevant to its determination about the appropriateness of establishing a guardianship for the minor.⁹⁰ The Task Force recommendations and S.S.B. 3187 specify the duties and responsibilities of the court visitor including interviewing, if possible, the minor and other persons with information that might be of value to the court and filing a written report with the court.⁹¹

From the standpoint of duties and responsibilities, the court visitor is essentially the functional equivalent of what has been called a guardian ad litem, but the Task Force recommendations and S.S.B. 3187 substitute the term *court visitor* for the term *guardian ad litem*.⁹² The purpose of the change in terminology is to avoid the tendency among lay persons to confuse the term *guardian ad litem* with the term *guardian* and to avoid confusion about the meaning of the term *guardian ad litem* which has somewhat different connotations in different types of proceedings.⁹³

Under the Task Force recommendations and S.S.B. 3187, the court would have discretion as to whether to appoint a court visitor.⁹⁴ As the Task Force Report states: "Although the court may appoint an attorney to serve as a court visitor, the court may appoint persons with other kinds of qualifications and expertise" to serve in this capacity.⁹⁵ However, the same person would not be permitted to serve both as counsel for the minor and as court visitor because of potential conflict between the counsel role and the court visitor role.⁹⁶

C. Minor Guardianship Hearings

In developing recommendations for guardianship hearings, Task Force members were made aware of questionable hearing practices in guardianship cases. The Guardianship and Conservatorship Study, entailing the review of over 4,000 guardianships and conservatorships files, discovered files in which there was neither a record of a hearing nor a record of waiver of the hearing by respondent.⁹⁷ Task Force members similarly report

90. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 50–51; *see infra* App. § 15, at A:4–A:5.

91. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, 50–51; *see infra* App. § 15, at A:4–A:5.

92. TASK FORCE REPORT, *supra* note 1, at 31.

93. *Id.*

94. *Id.*; S.S.B. 3187; *see infra* App. § 15(1), at A:4.

95. TASK FORCE REPORT, *supra* note 1, at 31.

96. *Id.* at 51; S.S.B. 3187; *see also infra* App. § 15(2), at A:4.

97. TASK FORCE REPORT, *supra* note 1, at 27.

concerns about the way in which hearings are conducted.⁹⁸ To address this, the Task Force recommendations and S.S.B. 3187 require a timely hearing on the petition.⁹⁹ The Task Force recommendations also specifically require that a complete record of the hearing be made.¹⁰⁰

The Task Force recommendations and S.S.B. 3187 also address the minor's attendance and participation in the hearing. The Task Force recommends the court should encourage minors to attend and participate in hearings if they "have the capacity to understand and express a reasoned preference [with respect to the] guardianship" and that there should be a presumption that it is in the best interest of a minor 14 years of age or older to attend and participate in hearings.¹⁰¹ S.S.B. 3187 provides that a minor shall be entitled to attend the hearing on the petition if the minor is of "an age appropriate" to do so and incorporates the foregoing presumption.¹⁰² As the drafters of the National Probate Code Standards explained: "There is growing recognition that presence and participation of a child in a proceeding determining residence and custody is important for both the child and the court" and "it is good practice to at least ask the children or youth for their views."¹⁰³

98. *Id.* at 26–27. For example, a Task Force member who is an attorney reported the following:

I practice primarily in probate and have been involved in six guardianships for minor children as guardian ad litem, attorney for a proposed minor ward, or attorney for a petitioner. Each of these cases had the following in common:

- the hearing on the guardianship petition was very brief (under five minutes);
- no testimony was heard from the proposed guardian or the minor child (where old enough to express preferences); and
- no findings as to the best interests of the child were entered into the record.

Telephone Interview with Breanna Young, Attorney, Davis Brown Law Firm (May 9, 2016).

99. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 48 (Recommendation 2.20); *see infra* App. § 16, at A:5.

100. TASK FORCE REPORT, *supra* note 1, at 48 (Recommendation 2.21).

101. *Id.* (Recommendation 2.23).

102. S.S.B. 3187; *see infra* App. § 16, at A:5.

103. NAT'L PROB. COURT STANDARDS § 3.5.5. cmt. (NAT'L PROB. COURT JUDGES 2013); *see also* UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT § 205(a) (UNIF. LAW COMM'N 2017) (requiring the minor to attend the hearing and allowing the minor to participate unless the court finds the minor lacks the ability or maturity to participate meaningfully in the hearing).

V. BACKGROUND CHECKS OF PROSPECTIVE GUARDIANS FOR MINORS

Currently, prospective guardians of minors are not statutorily mandated to undergo background checks prior to appointment.¹⁰⁴ However, the Task Force recommendations and S.S.B. 3187 would require such checks in order to furnish judges with information about prospective guardians that may well be relevant in determining their suitability for appointment.¹⁰⁵

The Task Force recommendations and S.S.B. 3187 would require all prospective guardians to undergo an Iowa criminal background check and checks of the Iowa child abuse, dependent adult abuse, and sex offender registries.¹⁰⁶ The court would have discretion to determine whether to use information generated by the checks to disqualify a person for a guardianship appointment.¹⁰⁷

Although prospective guardians are not currently mandated to undergo background checks, the Iowa Code does mandate background checks for persons such as employees of health care facilities, child care providers, foster parents, and school employees, including school bus drivers.¹⁰⁸ When considering the authority of guardians, the potential for misuse of that authority and the potential for the abuse and neglect of vulnerable children under guardianship, Task Force members conclude that statutorily mandating background checks of prospective guardians are warranted.¹⁰⁹

104. TASK FORCE REPORT, *supra* note 1, at 61 (“The Iowa Code should require that all prospective guardians and conservators of adults and minors . . . undergo criminal background checks . . .”).

105. *Id.* at 61–63; *see* S.S.B. 3187; *infra* App. § 18, at A:5. The National Probate Code Standards recommend background checks for prospective guardians, and the majority of states and the District of Columbia mandate criminal background checks for prospective guardians. *See* TASK FORCE REPORT, *supra* note 1, at 62 (citations omitted).

106. S.S.B. 3187; TASK FORCE REPORT, *supra* note 1, at 61; *see infra* App. § 18, at A:5.

107. TASK FORCE REPORT, *supra* note 1, at 61.

108. *See* IOWA DEP’T INSPECTIONS & APPEALS: HEALTH FACILITIES DIVISION, RECORD CHECKS—FREQUENTLY ASKED QUESTIONS 1 (2014), https://dia-hfd.iowa.gov/DIA_HFD_WEB/cmsDocDir/2014_08%20Background%20Checks%20FAQs%20UPDATE.pdf; *Guidance*, IOWA SCH. FIN. INFO. SERVS., www.iowaschoolfinance.com/Guidance (last visited April 23, 2018); *Provider Record Checks for Child Care*, IOWA DEP’T HUM. SERVS., <https://dhs.iowa.gov/childcare/provider-record-checks> (last visited Apr. 23, 2018).

109. TASK FORCE REPORT, *supra* note 1, at 62–63.

VI. COURT MONITORING OF GUARDIANSHIPS

It has been acknowledged how important ongoing court monitoring of minor guardianship is to ensure accountability of guardians and the welfare of children under guardianship,¹¹⁰ and it has been pointed out how important the transfer of jurisdiction from the probate court to the juvenile court is to promote effective and efficient monitoring.¹¹¹

The traditional vehicle for court monitoring of minor guardianships has been the requirement that a guardian submit an annual report describing the status of the child under the guardianship and the guardian's activities.¹¹² Alternatively, the Task Force recommendations and S.S.B. 3187 would require that the guardian submit an initial care plan within 60 days of appointment as well as annual reports thereafter.¹¹³ The purpose of the initial care plan is to encourage the guardian to consider the current and future needs of the child and to enable the court to determine whether the guardian is engaging in appropriate planning for the child under guardianship.¹¹⁴ This plan should describe the child's status, condition and needs, and what the guardian will do to meet those needs.¹¹⁵

At present, the same forms are used for the required reporting to the court by both guardians of adults and guardians of minors.¹¹⁶ Since the information needed for the monitoring of minor guardianships differs from the information needed for the monitoring of adult guardianships, the Task Force recommended separate standardized reporting forms be adopted for use by guardians of minors.¹¹⁷ The Task Force also recommended these forms be "user-friendly, i.e., written in plain language, [with] easily readable

110. See *supra* text accompanying notes 34–37.

111. See *supra* text accompanying note 36.

112. IOWA CODE ANN. § 633.669 (West 2017); see IOWA R. PROB. P. 7.8 (prohibiting waiver of a conservator's required annual report).

113. S.S.B. 3187, 87th Gen. Assemb., Reg. Sess. (Iowa 2018); TASK FORCE REPORT, *supra* note 1, at 95; see *infra* App. § 24, at A:8. Initial care plans for guardians are recommended by model acts and standards. See UNIF. GUARDIANSHIP, CONSERVATORSHIP & OTHER PROTECTIVE ARRANGEMENTS ACT §316 (UNIF. LAW COMM'N 2017); NAT'L PROB. COURT STANDARDS § 3.5.11 (NAT'L COLL. PROB. COURT JUDGES 2013); NAT'L GUARDIANSHIP ASS'N, STANDARDS OF PRACTICE 10–11 (2013), <https://www.guardianship.org/wp-content/uploads/2017/07/NGA-Standards-with-Summit-Revisions-2017.pdf>.

114. See TASK FORCE REPORT, *supra* note 1, at 93.

115. See *id.* at 93–94.

116. *Id.* at 96.

117. *Id.*

type, and understandable by [guardians] of different educational levels and from different backgrounds.”¹¹⁸ In accordance with these recommendations, the Task Force members prepared both a model initial care plan form and a model annual report form specifically to be completed by guardians of minors.¹¹⁹

VII. CONCLUSION

The Iowa Supreme Court’s Guardianship and Conservatorship Reform Task Force identified and addressed a number of serious problems regarding court jurisdiction over minor guardianship cases, criteria for the appointment of guardians, guardianship proceedings, background checks of proposed guardians, and court monitoring of guardianships.¹²⁰ The Task Force recommendations provide a roadmap for future directions of the guardianship and conservatorship system in general and minor guardianships in particular.¹²¹ The majority of its recommendations concerning minor guardianships require legislative implementation.¹²² It is important that S.S.B. 3187, or other legislation reflecting these recommendations, be enacted in order to ensure that vulnerable children receive needed care and protection.

118. *Id.* at 95.

119. *Id.* apps. L–M at A:95–A:107.

120. *Id.* at 7.

121. *Id.* at 5.

122. *Id.* at 6.

APPENDIX

Senate Study Bill 3187 – Introduced

SENATE FILE _____
BY (PROPOSED
COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON
ZAUN)

A BILL FOR

1 An act providing for juvenile court jurisdiction over minor guardianship
2 proceedings.

DIVISION I

IOWA MINOR GUARDIANSHIP PROCEEDINGS ACT

6 Section 1. NEW SECTION. **232D.101** **Title.**

7 This chapter shall be known as the “*Iowa Minor Guardianship Proceedings Act.*”

8 Section 2. NEW SECTION. **232D.102** **Definitions.**

9 1. “*Adult*” means an individual eighteen years of age or older or a person
10 declared to be emancipated by a court of competent jurisdiction.

11 2. “*Conservator*” means a person appointed by a court to have custody and
12 control of the property of a minor.

13 3. “*Court*” means the juvenile court established under section 602.7101.

14 4. “*Demonstrated lack of consistent parental participation*” means the
15 refusal of a parent to comply with the duties and responsibilities imposed upon a
16 parent by the parent-child relationship, including but not limited to providing the
17 minor with necessary food, clothing, shelter, health care, education, and other care
18 and supervision necessary for the minor’s physical, mental, and emotional health
19 and development.

20 5. “*Guardian*” means a person appointed by the court to have custody of a
21 minor.

22 6. “*Legal custodian*” means a person awarded legal custody of a minor.

23 7. “*Legal custody*” means an award of the rights of legal custody of a minor
24 under which a parent has legal custodial rights and responsibilities toward the
25 minor child as defined in section 598.1.

26 8. “*Limited guardianship*” means a guardianship that grants the guardian
27 less than all powers available under this chapter or otherwise restricts the powers
28 of the guardian.

29 9. “*Minor*” means an unmarried and unemancipated individual under the
30 age of eighteen years.

31 10. “*Parent*” means the same as defined in section 232.2

32 Section 3. NEW SECTION. **232D.103** **Jurisdiction.**

33 The juvenile court has exclusive jurisdiction in a guardianship proceeding
34 concerning a minor who is alleged to be in need of a guardianship.

35 Section 4. NEW SECTION. **232D.104** **Venue.**

36 Venue for guardianship proceedings under this chapter shall be determined in
37 accordance with section 232.62.

38 Section 5. NEW SECTION. **232D.105 Proceedings governed**
39 **by other law.**

40 1. A petition alleging that a minor is in need of a conservator or both a
41 conservator and a guardian is not subject to this chapter. Such proceedings are
42 governed by chapter 633 and may be initiated pursuant to section 633.627.

43 2. If a minor guardianship proceeding under this chapter pertains to an
44 Indian child as defined in section 232B.3 and the proceeding is subject to the Iowa
45 Indian Child Welfare Act under chapter 232B, the proceeding and other actions
46 taken in connection with the proceeding shall comply with chapter 232B.

47 Section 6. NEW SECTION. **232D.106 Applicability of rules of**
48 **civil procedure.**

49 The rules of civil procedure shall govern guardianship proceedings concerning a
50 minor who is alleged to be in need of a guardianship except as otherwise set forth
51 in this chapter.

52 Section 7. NEW SECTION. **232D.201 Termination of**
53 **parental rights and child in need of assistance cases.**

54 1. The court may appoint a guardian for a minor who does not have a
55 guardian if all parental rights have been terminated.

56 2. The court may appoint a guardian for a minor in a child in need of
57 assistance case pursuant to section 232.101A, 232.103A, or 232.104.

58 Section 8. NEW SECTION. **232D.202 Death of parents.**

59 1. The court may appoint a guardian for a minor if both parents are
60 deceased.

61 2. In appointing a guardian for a minor whose parents are deceased, the court
62 shall give preference to a person, if qualified and suitable, nominated as guardian
63 for minor by a will that was executed by the parent or parents having legal custody
64 of the minor at the time of the parent's or parents' death, and that was admitted to
65 probate under chapter 633.

66 Section 9. NEW SECTION. **232D.203 Guardianship with**
67 **parental consent.**

68 1. The court may appoint a guardian for a minor if the court finds all of the
69 following:

70 a. The parent or parents having legal custody of the minor understands the
71 nature of the guardianship and knowingly and voluntarily consents to the
72 guardianship.

73 b. The minor is in need of a guardianship because of any one of the
74 following:

75 (1) The parent having legal custody of the minor has a physical or mental
76 illness that prevents the parent from providing care and supervision of the child.

77 (2) The parent having legal custody of the minor is incarcerated or
78 imprisoned.

79 (3) The parent having legal custody of the minor is on active military duty.

80 (4) The minor is in need of a guardianship for some other reason constituting
81 good cause shown.

82 c. Appointment of a guardian for the minor is in the best interest of the
83 minor.

84 2. If the guardianship petition requests a guardianship with parental consent,
85 the petition shall include an affidavit signed by the parent or parents verifying that
86 the parent or parents knowingly and voluntarily consent to the guardianship. The

87 consent required by this subsection shall be on a form prescribed by the judicial
88 branch.

89 3. On or before the date of the hearing on the petition, the parent or parents
90 and the proposed guardian shall file an agreement with the court. This agreement
91 shall state the following:

92 a. The responsibilities of the guardian.

93 b. The responsibilities of the parent or parents.

94 c. The expected duration of the guardianship, if known.

95 4. If the court grants the petition, it shall approve the guardianship
96 agreement between the custodial parent and the proposed guardian and
97 incorporate its terms by reference unless the court finds the agreement was not
98 reached knowingly and voluntarily or is not in the best interests of the child.

99 Section 10. NEW SECTION. **232D.204** **Guardianship without**
100 **parental consent.**

101 1. The court may appoint a guardian for a minor without the consent of the
102 parent or parents having legal custody of the minor if the court finds by clear and
103 convincing evidence all of the following:

104 a. There is a person serving as a de facto guardian of the minor.

105 b. There has been a demonstrated lack of consistent parental participation in
106 the life of the minor by the parent. In determining whether a parent has
107 demonstrated a lack of consistent participation in the minor's life, the court may
108 consider all of the following:

109 (1) The intent of the parent in placing the custody, care, and supervision of
110 the minor with the person petitioning as a de facto guardian and the fact and
111 circumstances regarding such placement.

112 (2) The amount of communication and visitation of the parent with the minor
113 during the alleged de facto guardianship.

114 (3) Any refusal of the parent to comply with conditions for retaining custody
115 of the minor set forth in any previous court orders.

116 2. The court may appoint a guardian for a minor without the consent of the
117 parent or parents having custody of the minor if the court finds by clear and
118 convincing evidence all of the following:

119 a. No parent having custody of the minor is willing or able to exercise the
120 power, the court will grant to the guardian if the court appoints a guardian.

121 b. Appointment of a guardian for the minor is in the best interest of the
122 minor.

123 3. Prior to granting a petition for guardianship, the court shall consider
124 whether the filing of a child in need of assistance petition is appropriate under
125 section 232.87. If the court determines a child in need of assistance petition is not
126 appropriate, the court shall make findings of why a child in need of assistance
127 petition is not appropriate.

128 4. A proceeding under this section shall not create a new eligibility category
129 for the department of human services protective services.

130 Section 11. NEW SECTION. **232D.301** **Petition.**

131 1. Proceedings for guardianship pursuant to this chapter may be initiated by
132 the filing of a petition by any person with an interest in the welfare of the minor.

133 2. The petition shall list, to the extent known, all of the following:

134 a. The name, age, and address of the minor who is the subject of the petition.

135 b. The name and address of the petitioner and the petitioner's relationship to
136 the minor.

137 c. If the petitioner is not the proposed guardian, the name and address of the
138 proposed guardian and the reason the proposed guardian should be selected.
139 d. The name and address, to the extent known and ascertainable, of the
140 following:

- 141 (1) Any living parents of the minor.
- 142 (2) Any legal custodian of the minor.
- 143 (3) Any adult who has had the primary care of the minor or with whom the
144 minor has lived for at least six months prior to the filing of the petition.
- 145 3. The petition shall contain a concise statement of the factual basis for the
146 petition.
- 147 4. Any additional information, to the extent known and reasonable
148 ascertainable, required by section 598B.209 shall be included in an affidavit
149 attached to the petition.

150 Section 12. NEW SECTION. **232D.302 Notice.**

- 151 1. The filing of a petition shall be served upon the minor who is the subject
152 of the petition in the manner of an original notice in accordance with rule of civil
153 procedure 1.305(2) governing such notice. Notice to the attorney representing the
154 minor, if any, is notice to the minor.
- 155 2. Notice shall be served upon the minor's known parents listed in the
156 petition in accordance with rule of civil procedure 1.305.
- 157 3. Notice shall be served upon other known persons listed in the petition in
158 the manner prescribed by the court, which may be notice by mail in accordance
159 with rule of civil procedure 1.308(5). Failure of such persons to receive actual
160 notice does not constitute a jurisdictional defect precluding the appointment of a
161 guardian by the court.
- 162 4. Notice of the filing of a petition given to a person under subsection 2 or 3
163 shall include a statement that the person may register to receive notice of the
164 hearing on the petition and other proceedings and the manner of such registration.

165 Section 13. NEW SECTION. **232D.303 Attorney for minor.**

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

173 Section 14. NEW SECTION. **232D.304 Attorney for parent.**

- 174 1. Upon the filing of a petition for appointment of a guardian, the court shall
175 appoint an attorney for the parent identified in the petition if all of the following
176 are true:
- 177 a. The parent objects to the appointment of a guardian for the minor.
- 178 b. The parent requests appointment of an attorney and the court determines
179 that the parent is unable to pay for an attorney in accordance with section 232.141.

180 Section 15. NEW SECTION. **232D.305 Court visitor.**

- 181 1. The court may appoint a court visitor for the minor.
- 182 2. The same person shall not serve both as the attorney representing the
183 minor and as court visitor.
- 184 3. Unless otherwise enlarged or circumscribed by the court, the duties of a
185 court visitor with respect to the minor shall include all of the following:
- 186 a. Conducting, if the minor's age is appropriate, an initial in-person
187 interview with the minor.

188 b. Explaining to the minor, if the minor's age is appropriate, the substance of
189 the petition, the purpose and effect of the guardianship proceeding, the rights of
190 the minor at the hearing, and the general powers and duties of the guardian.
191 c. Determining, if the minor's age is appropriate, the view of the minor
192 regarding the proposed guardian, the proposed guardian's powers and duties, and
193 the scope and duration of the proposed guardianship.
194 d. Interviewing the parent or parents and any other person with legal
195 responsibility for the custody, care, or both, of the minor.
196 e. Interviewing the petitioner, and if the petitioner is not the proposed
197 guardian, interviewing the proposed guardian.
198 f. Visiting, to the extent feasible, the residence where it is reasonably
199 believed that the minor will live if the guardian is appointed.
200 g. Making any other investigation the court directs, including but not limited
201 to, interviewing any persons providing medical, mental health, educational, social,
202 or other services to the minor.
203 4. The court visitor shall submit a written report to the court that contains all
204 of the following:
205 a. A recommendation regarding the appropriateness of a guardianship for the
206 minor.
207 b. A statement of the qualifications of the guardian together with a statement
208 of whether the minor has expressed agreement with the appointment of the
209 proposed guardian.
210 c. Any other matters the court visitor deems relevant to the petition for
211 guardianship and the best interests of the minor.
212 d. Any other matters the court directs.
213 5. The report of the court visitor shall be made part of the court record unless
214 otherwise ordered by the court.
215 Section 16. NEW SECTION. **232D.307 Hearing on petition.**
216 1. The court shall fix the time and place of hearing on the petition and shall
217 prescribe a time not less than twenty days after the date the notice is served unless
218 the court finds there is good cause shown to shorten the time period to less than
219 twenty days. The court shall also prescribe the manner of service of the notice of
220 such hearing.
221 2. The minor who is the subject of a petition filed pursuant to section
222 232D.301 shall be entitled to attend the hearing on the petition if the minor is of
223 an age appropriate to attend the hearing. A presumption shall exist that a minor
224 fourteen years of age or older is of an age appropriate to attend the hearing.
225 3. The court shall not exclude a minor entitled to attend the hearing under
226 subsection 2 unless the court finds that there is good cause shown for excluding
227 the minor from attendance.
228 Section 18. NEW SECTION. **232D.308 Background checks of**
229 **proposed guardians.**
230 1. The court shall request criminal record checks and checks of the child
231 abuse, dependent adult abuse, and sex offender registries in this state for all
232 proposed guardians other than financial institutions with Iowa trust powers unless
233 a proposed guardian has undergone the required background checks in this section
234 within the twelve months prior to the filing of a petition.
235 2. The court shall review the results of background checks in determining
236 the suitability of a proposed guardian for appointment.
237 3. The judicial branch in conjunction with the department of public safety,
238 the department of human services, and the state chief information officer shall

239 establish procedures for electronic access to the single contact repository
 240 necessary to conduct background checks requested under subsection 1.
 241 4. The person who files a petition for appointment of guardian for a minor
 242 shall be responsible for paying the fee for the background check conducted
 243 through the single contact repository unless the court waives the fee for good
 244 cause shown.

245 Section 19. NEW SECTION. **232D.309 Selection of guardian—**
 246 **qualifications and preferences.**

247 1. The court shall appoint as guardian a qualified and suitable person who is
 248 willing to serve subject to the preferences as to the appointment of a guardian set
 249 forth in subsections 2 and 3.

250 2. In appointing a guardian for a minor, the court shall give preference to a
 251 person, if qualified and suitable, nominated as guardian for a minor by a will that
 252 was executed by the parent or parents having legal custody of the minor at the
 253 time of the parent's or parents' death, and that was admitted to probate under
 254 chapter 633.

255 3. In appointing a guardian for a minor, the court shall give preference, if
 256 qualified and suitable, to a person requested by a minor fourteen years of age or
 257 older.

258 Section 20. NEW SECTION. **232D.310 Emergency**
 259 **appointment of temporary guardian.**

260 1. A person authorized to file a petition under section 232D.301 may file a
 261 petition for the emergency appointment of a temporary guardian for the minor.

262 2. The petition shall state the following:

263 a. The name and address of the minor and the birthdate of the minor.

264 b. The name and address of the living parents of the minor, if known.

265 c. The name and address of any other person legally responsible for the
 266 custody or care of the minor, if known.

267 d. The reason the emergency appointment of a temporary guardian is sought.

268 3. The court may enter an ex parte order appointing a temporary guardian for
 269 a minor on an emergency basis under this section if the court finds that all of the
 270 following are met:

271 a. There is not sufficient time to file a petition and hold a hearing pursuant to
 272 section 232D.301.

273 b. The appointment of temporary guardian is necessary to avoid immediate
 274 or irreparable harm to the minor.

275 4. Notice of the emergency appointment of a temporary guardian shall be
 276 provided to persons required to be listed in the application under subsection 2.

277 5. The parents of the minor and any other person legally responsible for the
 278 custody or care of the minor may file a written request for a hearing. Such hearing
 279 shall be held no later than seven days after the filing of the written request.

280 6. The powers of the temporary guardian set for in the ex parte order shall be
 281 limited to those necessary to address the emergency situation requiring the
 282 appointment of a temporary guardian.

283 7. The ex parte order shall terminate within thirty days after the order is
 284 issued.

285 Section 21. NEW SECTION. **232D.401 Order appointing**
 286 **guardian and powers of guardian.**

287 1. The order by the court appointing a guardian for a minor shall state the
 288 basis for the order.

289 2. The order by the court appointing a guardian for a minor shall state
 290 whether the guardianship is a limited guardianship.

291 3. An order by the court appointing a guardian for a minor shall state the
 292 powers granted to the guardian. Except as otherwise limited by the court order,
 293 the court may grant the guardian the following powers, which may be exercised
 294 without prior court approval:

295 a. Taking custody of the minor and establishing the minor's permanent
 296 residence if otherwise consistent with the terms of any order of competent
 297 jurisdiction relating to the custody, placement, detention, or commitment of the
 298 minor within the state.

299 b. Consenting to medical, dental, and other health care treatment and
 300 services for the minor.

301 c. Providing or arranging for the provision of education for the minor
 302 including but not limited to preschool education, primary education and secondary
 303 education, special education and related services, and vocational services.

304 d. Consenting to professional services for the minor to ensure the safety and
 305 welfare of the minor.

306 e. Applying for and receiving funds and benefits payable for the support of
 307 the minor.

308 f. Any other powers the court may specify.

309 4. The court may grant the guardian the following powers, which shall only
 310 be exercised with prior court approval:

311 a. Consenting to the withholding or withdrawal of life sustaining procedures,
 312 as defined in section 144A.2, from the minor, the performance of an abortion on
 313 the minor, or the sterilization of the minor.

314 b. Establishing the residence of the minor outside of the state.

315 c. Consenting to the marriage of the minor.

316 d. Consenting to the emancipation of the minor.

317 5. The guardian shall obtain prior court approval for denial of all visitation,
 318 communication, or interaction between the minor and the parents of the minor.
 319 The court shall approve such denial of visitation, communication, or interaction
 320 upon a showing by the guardian that significant physical or emotional harm to the
 321 minor has resulted or is likely to result to the minor from parental contact. The
 322 guardian may place reasonable time, place, or manner restrictions on visitation,
 323 communication, or interaction between the minor and the minor's parents without
 324 prior court approval.

325 Section 22. NEW SECTION. **232D.402 Duties and**
 326 **responsibilities of guardian.**

327 1. A guardian is a fiduciary and shall act in the best interest of the minor and
 328 exercise reasonable care, diligence, and prudence in performing guardianship
 329 duties and responsibilities. The fiduciary duties of a guardian for an adult set forth
 330 in chapter 633 are applicable to a guardian under this chapter.

331 2. Except as otherwise limited by the court, a guardian has the duty and
 332 responsibility to ensure the minor's health, education, safety, welfare, and support.

333 3. A guardian with whom the minor is not living should maintain regular
 334 contact with the minor.

335 4. A guardian should make reasonable efforts to facilitate the continuation of
 336 the relationship of the minor and the minor's parents subject to section 232D.401,
 337 subsection 5.

338 5. A guardian shall file the reports with the court required under section
 339 232D.501.

340 6. A guardian shall promptly inform the court of any change in the
 341 permanent residence of the minor and the minor's new address.

342 Section 23. NEW SECTION. **232D.403** **Guardian's acceptance**
 343 **of appointment and oath and issuance of letters of appointment.**

344 The court shall issue letters of appointment to a guardian upon the
 345 guardian's acceptance of appointment and the guardian's subscription of an oath,
 346 or certification under penalties of perjury, that the guardian will faithfully
 347 discharge the duties imposed by law, according to the best of the guardian's
 348 ability.

349 Section 24. NEW SECTION. **232D.501** **Reports of guardian.**

350 1. A guardian appointed by the court under this chapter shall file the
 351 following reports which shall not be waived by the court:

352 a. A verified initial care plan filed within sixty days of appointment. The
 353 information in the initial care plan shall include but not be limited to the following
 354 information:

355 (1) The minor's current residence and guardian's plan for the minor's living
 356 arrangements.

357 (2) The guardian's plan for payment of the minor's living expenses and other
 358 expenses.

359 (3) The minor's health status and the guardian's plan for meeting the minor's
 360 health needs.

361 (4) The minor's educational training and vocational needs and the guardian's
 362 plan for meeting the minor's educational needs.

363 (5) The guardian's plan for facilitating contacts of the minor with the minor's
 364 parents.

365 (6) The guardian's plan for contact with an activities on behalf of the minor.

366 b. A verified annual report filed within thirty days of the close of the
 367 reporting period. The information in the annual report shall include but not be
 368 limited to the following information.

369 (1) The current residence and living arrangements of the minor.

370 (2) The sources of the payment for the minor's living expenses and other
 371 expenses.

372 (3) The minor's health status and health services provided the minor.

373 (4) The minor's mental, behavioral, or emotional problems, if any, and
 374 professional services provided the minor for such problems.

375 (5) The minor's educational status and educational training and vocational
 376 services provided the minor.

377 (6) The nature and extent of parental visits and communication with the
 378 minor.

379 (7) The nature and extent of the guardian's visits with and activities on behalf
 380 of the minor.

381 (8) The need for continuation of guardianship.

382 (9) The ability of the guardian to continue as guardian.

383 (10) The need of the guardian for assistance in providing or arranging for the
 384 provision of care for the minor.

385 c. A final report filed within thirty days of the termination of the
 386 guardianship under section 232D.503.

387 2. The judicial branch shall prescribe the forms for use by the guardian in
 388 filing the reports required by this section.

389 3. The clerk of the court shall notify the guardian in writing of the reporting
390 requirements and shall provide information and assistance to the guardian in filing
391 the reports.

392 4. Reports of the guardian shall be reviewed and approved by the court.

393 Section 25. NEW SECTION. **232D.502 Removal of guardian—**
394 **appointment of successor guardian.**

395 1. The court may remove a guardian for a minor for failure to perform
396 guardianship duties or for other good cause shown.

397 2. The court shall conduct a hearing to determine whether a guardian should
398 be removed on the filing of a petition by a minor under guardianship fourteen
399 years of age or older, the parent of a minor, or other person with an interest in
400 welfare of the minor if the court determines that there are reasonable grounds for
401 believing that removal is appropriate based on the allegations stated in the
402 petition.

403 3. The court may conduct a hearing to determine whether the guardian
404 should be removed on the receipt of a written communication from a minor under
405 guardianship fourteen years of age or older, the parent of the minor, or other
406 person with an interest in welfare of the minor if the court determines that a
407 hearing would be in the best interest of the minor.

408 4. The court may decline to hold a hearing under subsection 2 or 3 if the
409 same or substantially similar facts were alleged in a petition filed in the preceding
410 six months or in a written communication received in the preceding six months.

411 5. The court may appoint a successor guardian on the removal of a guardian
412 pursuant to subsection 1, the death of a guardian, or the resignation of a guardian.

413 Section 26. NEW SECTION. **232D.503 Termination and**
414 **modification of guardianships.**

415 1. A guardianship shall terminate on the minor's death, adoption,
416 emancipation, or attainment of majority.

417 2. The court shall terminate a guardianship established pursuant to section
418 232D.203 if the court finds that the basis for the guardianship set forth in section
419 232D.203 is not currently satisfied unless the court finds that the termination of
420 the guardianship would be harmful to the minor and the minor's interest in
421 continuation of the guardianship outweighs the interest of a parent of the minor in
422 the termination of the guardianship.

423 3. The court shall terminate a guardianship established pursuant to section
424 232D.204 if the court finds that the basis for the guardianship set forth in section
425 232D.204 is not currently satisfied. A person seeking termination of guardianship
426 established pursuant to section 232D.204 has the burden of making a prima facie
427 showing that the guardianship should be terminated. If such a showing is made,
428 the guardian has the burden of going forward to prove by clear and convincing
429 evidence that the guardianship should not be terminated.

430 4. The court shall modify the powers granted to the guardian if the court
431 finds such powers no longer meet the needs of the minor or are not in the minor's
432 best interest.

433 5. The court may conduct a hearing to determine whether termination or
434 modification of a guardianship is appropriate on the filing of a petition by a minor
435 under guardianship, a guardian, or other person with an interest in the welfare of
436 the minor or on receipt of a written communication from such persons.

437 Section 27. NEW SECTION. **232D.504 Rights and immunities**
438 **of a guardian.**

1. A guardian is not required to use the guardian's personal fund for the minor's expenses. If a conservator has been appointed for the estate of the minor, the guardian may request and the conservator may approve and pay for the requested reimbursement without prior court approval.

2. A guardian may submit a request, together with the guardian's annual report, for approval by the court of reasonable compensation for services as guardian.

3. A guardian is not liable to a third person for an act or omission of the minor solely by reason of the guardianship.

DIVISION II

MISCELLANEOUS CHANGES

Section 28. Section 232.101A, Code 2018, is amended to read as follows:

232.101A Transfer of guardianship to custodian.

1. After a dispositional hearing the court may ~~enter an order transferring guardianship of the child to a custodian~~ close the child in need of assistance case and appoint a guardian pursuant to section 232D.309 and section 232D.401 if all of the following conditions are met:

a. The person receiving guardianship meets the definition of custodian in section 232.2.

b. The person receiving guardianship has assumed responsibility for the child prior to filing of the petition under this division and has maintained placement of the child since the filing of the petition under this division.

c. The parent of the child does not appear at the dispositional hearing, or the parent appears at the dispositional hearing, does not object to the transfer of guardianship, and agrees to waive the requirement for making reasonable efforts as defined in section 232.102.

2. If the court transfers guardianship pursuant to subsection 1, the court may close the child in need of assistance case by transferring jurisdiction over the child's guardianship to the probate court. The court shall inform the proposed guardian of the guardian's reporting duties under section ~~633.669~~ 232D.501 and other duties under chapter ~~633-232D~~. ~~Upon transferring jurisdiction, the~~ The court shall direct the ~~probate clerk of court~~, once the proposed guardian has filed an oath of office and identification ~~in accordance with section 602.6111~~, to issue letters of appointment for guardianship and docket the case in ~~probate guardianship~~. ~~Records contained in the probate case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 232.147 and other confidentiality provisions of this chapter for cases not involving juvenile delinquency.~~

Section 29. Section 232.104, subsection 8, paragraph b, Code 2018, is amended to read as follows:

b. In lieu of the procedures specified in paragraph "a", the court may close the child in need of assistance case ~~by transferring jurisdiction over the child's guardianship to the probate court and may appoint a guardian pursuant to chapter 232D~~. The court shall inform the proposed guardian of the guardian's reporting duties under section ~~633.669~~ and other duties under the probate code. ~~Upon transferring jurisdiction, the court shall direct the probate clerk, once the proposed guardian has filed an oath of office and identification in accordance with section 602.6111, to issue letters of appointment for guardianship and docket the case in probate. Records contained in the probate case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 232.147~~

489 ~~and other confidentiality provisions of this chapter for cases not involving juvenile~~
490 ~~delinquency.~~

491 Section 30. Section 232.141, subsection 2, Code 2018, is amended by adding
492 the following new paragraphs:

493 NEW PARAGRAPH. *d.* Juvenile court expenses incurred by a court
494 visitor appointed by the court to serve the purposes provided in chapter 232D.

495 NEW PARAGRAPH. *e.* Reasonable compensation for a court visitor
496 appointed by the court to serve the purposes under chapter 232D.

497 Section 31. Section 633.552, subsection 2, Code 2018, is amended to
498 read as follows:

499 2. That the proposed ward is ~~in either of the following categories:~~

500 ~~a. Is a person whose decision-making capacity is so impaired that the person~~
501 ~~is unable to care for the person's personal safety or to attend to or provide for~~
502 ~~necessities for the person such as food, shelter, clothing, or medical care, without~~
503 ~~which physical injury or illness might occur.~~

504 ~~b. Is a minor.~~

505 Section 32. Section 633.554, subsection 2, Code 2018, is amended to
506 read as follows:

507 2. *a.* ~~If the proposed ward is a minor or if~~ the proposed ward is an
508 adult under a standby petition and the court determines, pursuant to section
509 633.561, subsection 1, paragraph "b", that the proposed ward is entitled to
510 representation, notice in the manner of original notice, or another form of notice
511 ordered by the court, given to the attorney appointed to represent the ward is
512 notice to the proposed ward.

513 *b.* Notice shall also be served upon:

514 ~~(1) The parents of the proposed ward, if the proposed ward is a minor.~~

515 ~~(2) The spouse of the proposed ward, if the proposed ward is an adult. If~~
516 ~~the proposed ward has no spouse, notice shall be served upon the proposed ward's~~
517 ~~adult children, if any.~~

518 Section 33. Section 633.557, subsection 1, Code 2018, is amended to read as
519 follows:

520 1. A guardian may also be appointed by the court upon the verified petition
521 of the proposed ward, without further notice, ~~if the proposed ward is other than a~~
522 ~~minor under the age of fourteen years~~, provided the court determines that such an
523 appointment will inure to the best interest of the applicant. However, if any
524 involuntary petition is pending, the court shall be governed by section 633.634.
525 The petition shall provide the proposed ward notice of a guardian's powers as
526 provided in 18 section 633.562.

527 Section 34. Section 633.561, subsection 1, paragraph b, Code 2018, is
528 amended to read as follows:

529 *b.* If the proposed ward is ~~either a minor or~~ an adult under a standby petition,
530 the court shall determine whether, under the circumstances of the case, the
531 proposed ward is entitled to representation. The determination regarding
532 representation may be made with or without notice to the proposed ward, as the
533 court deems necessary. If the court determines that the proposed ward is entitled
534 to representation, the court shall appoint an attorney to represent the proposed
535 ward. After making the determination regarding representation, the court shall set
536 a hearing on the petition, and provide for notice on the determination regarding
537 representation and the date for hearing.

538 Section 35. Section 633.635, subsection 5, Code 2018, is amended to read as
539 follows:

540 5. From time to time, upon a proper showing, the court may modify the
541 respective responsibilities of the guardian and the ward, after notice to the ward
542 and an opportunity to be heard. Any modification that would be more restrictive
543 or burdensome for the ward shall be based on clear and convincing evidence that
544 the ward continues to fall within the categories of section 633.552, subsection 2,
545 ~~paragraph “a” or “b”~~, and that the facts justify a modification of the
546 guardianship. Section 633.551 applies to the modification proceedings. Any
547 modification that would be less restrictive for the ward shall be based upon proof
548 in accordance with the requirements of section 633.675.
549 Section 36. Section 633.675, subsection 2, Code 2018, is amended by striking
550 the subsection.
551 Section 37. Section 633.679, subsection 2, Code 2018, is amended by striking
552 the subsection.
553 Section 38. REPEAL. Section 633.559, Code 2018, is repealed.