

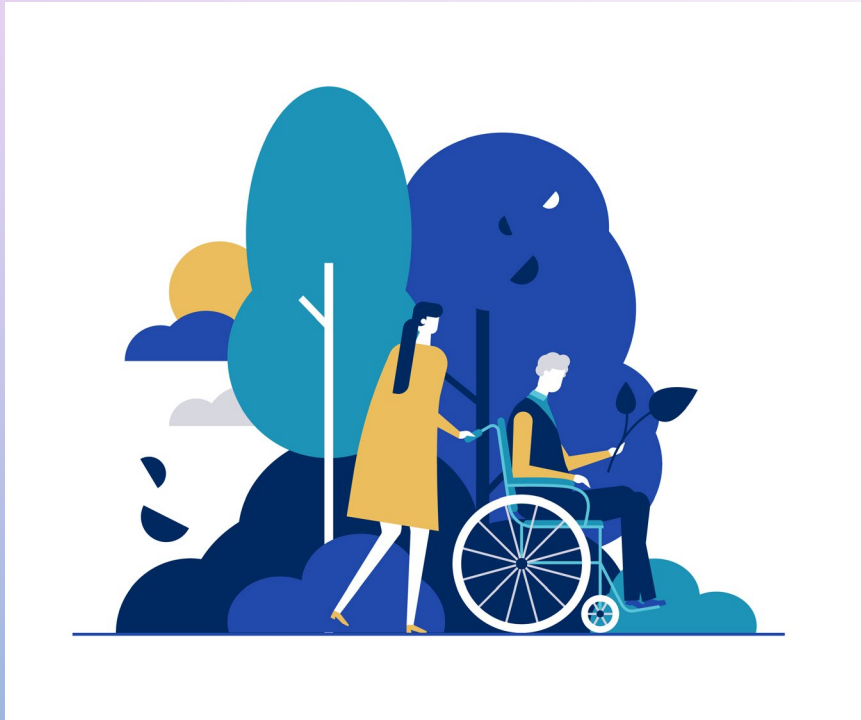
**UNIFORM GUARDIANSHIP, CONSERVATORSHIP, AND OTHER  
PROTECTIVE ARRANGEMENTS ACT**

**JANUARY 1, 2022**

**VIRTUAL TRIBAL-AL TSA-HCS-AAA SPRING SUMMIT  
MAY 20, 2021**



\*\*\*THE FOLLOWING IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND IS NOT INTENDED AS LEGAL ADVICE



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# WHAT IS GUARDIANSHIP?

*LEGAL PROCESS WHERE A COURT APPOINTS SOMEONE  
TO MAKE DECISIONS ON BEHALF OF, AND ACT ON  
BEHALF OF, SOMEONE ELSE*

*A GUARDIAN IS A FIDUCIARY*

# GUARDIANSHIP INDIVIDUAL RIGHTS AND PROTECTION OF VULNERABLE PERSONS



## COMPLETE STATUTORY CHANGE

✓ CURRENT LAW – RCW 11.88 AND RCW 11.92

✓ NEW LAW – RCW 11.130 (“UGA”)

# LOOK CLOSELY – EFFECTIVE IN TWO STAGES



Minor guardianships – January 1, 2021

Adult guardianships, conservatorships, protective arrangements, supported decision making – everything else – January 1, 2022

# LANGUAGE CHANGES

Incapacitated person and alleged  
incapacitated person - GONE

NOW – individual subject to guardianship and  
individual subject to conservatorship; respondent

# LANGUAGE CHANGES, CONTINUED

## ❖ PERSONAL HEALTH AND WELFARE, CARE AND SAFETY

**“GUARDIAN”** – A PERSON WHO IS APPOINTED BY THE COURT TO BE RESPONSIBLE FOR THESE ASPECTS OF ANOTHER’S LIFE (CURRENTLY CALLED “GUARDIAN OF THE PERSON”)

FULL VS. LIMITED

\*\*A GUARDIAN UNDER THE UGA HAS SOME LIMITED ABILITY TO HANDLE MONEY AND PROPERTY



# LANGUAGE CHANGES, CONTINUED

## ❖ FINANCES AND PROPERTY

**“CONSERVATOR”** – A PERSON WHO IS APPOINTED BY THE COURT TO BE RESPONSIBLE FOR THESE ASPECTS OF ANOTHER’S LIFE (CURRENTLY CALLED “GUARDIAN OF THE ESTATE”), \*\* CAN ALSO APPLY WHEN THE ADULT IS MISSING, DETAINED, OR UNABLE TO RETURN TO THE UNITED STATES

FULL VS. LIMITED

# NEW CONCEPTS

- **PROTECTIVE ARRANGEMENT** – A COURT ORDERED ARRANGEMENT – INTENT IS SIMPLER ALTERNATIVES THAN ESTABLISHING GUARDIANSHIP OR CONSERVATORSHIP
- **SUPPORTED DECISION MAKING-** THE INDIVIDUAL MAKES THE DECISIONS WITH THE ASSISTANCE OF A SUPPORTER – NOT A COURT PROCESS

# OTHER LESS RESTRICTIVE ALTERNATIVES



- ❖ Power of attorney for health care or finances
- ❖ Representative payee or protective payee
- ❖ Technological assistance
- ❖ Trust

# GUARDIANSHIP AND CONSERVATORSHIP – ONLY IF OTHER LESS RESTRICTIVE ALTERNATIVES AREN'T AVAILABLE

Power of Attorney for  
Health Care or  
Finances

Supported Decision  
Making Agreement

Representative Payee

Protective Arrangement

Limited Guardianship or Conservatorship

Full guardianship and conservatorship

# COURT PROCESS

- ✓ COURT PROCESS IS GENERALLY SIMILAR TO CURRENT PROCESS – PETITION, NOTICE AND HEARING, ETC.
- ✓ INDIVIDUAL RESPONDENT MAY HAVE A RIGHT TO A COURT APPOINTED ATTORNEY (UNABLE TO AFFORD AN ATTORNEY, SUBSTANTIAL HARDSHIP)
- ✓ COURT VISITOR – IS APPOINTED TO REPORT TO THE COURT ON THE SITUATION (GAL IN CURRENT LAW)
- ✓ PROFESSIONAL EVALUATION
- ✓ LEGAL NOT MEDICAL DETERMINATION

# LETTERS OF GUARDIANSHIP AND/OR CONSERVATORSHIP

If appointed, the letters are obtained after the Acceptance of Appointment is filed.. Evidence of the guardian and/or conservator's authority to act on behalf of the individual



# WHO CAN BECOME A GUARDIAN OR A CONSERVATOR?

- QUALIFICATIONS: RCW 11.130.090 – AGE, CERTAIN CRIMINAL AND CIVIL ISSUES,
- DISCLOSURES: RCW 11.130.085 – CERTAIN CRIMINAL AND CIVIL HISTORY, INCLUDING BANKRUPTCY
- PRIORITY: - IN STATUTE – ALREADY APPOINTED ELSEWHERE, PERSON'S PRIOR NOMINATION, SPOUSE OR PARTNER, RELATIVE OR SOMEONE SHOWING SPECIAL CONCERN, PROFESSIONAL

# RIGHTS OF INDIVIDUAL IN A GUARDIANSHIP AND/OR CONSERVATORSHIP

## **MANY, BUT INCLUDE:**

- ❖ MAKE DECISIONS IF THE PERSON IS ABLE
- ❖ PERSON'S HISTORICAL PREFERENCES AND MORAL OR RELIGIOUS VALUES, OPINIONS, OR PHILOSOPHICAL BELIEFS GIVEN DEFERENCE
- ❖ RIGHTS OF ASSOCIATION
- ❖ RIGHTS TO MODIFY OR TERMINATE IF APPROPRIATE



## FAMILY, FRIENDS, OTHERS

- ❑ BECOME A NOTICE PARTY - MAY BE ESTABLISHED AS NOTICE PARTY THROUGH COURT ORDER OR REQUEST THROUGH RCW 11.130.080
- ❑ EVENTS INCLUDE: PERSON MOVING RESIDENCE, CHANGE IN CONDITION, ETC.

# RESPONSIBILITIES OF A GUARDIAN AND/OR CONSERVATOR



Fiduciary –acting in the person’s best interests

Notices to individual, court and notice parties

Reporting to court on a periodic basis

# RESPONSIBILITIES OF A GUARDIAN AND/OR CONSERVATOR, CONTINUED

Need court permission for certain medical decisions and property decisions

Duty to promote individual's self-determination

Responsible for person's needs (of person or property) being met



# ORGANIZATION OF WASHINGTON'S UGA

## RCW 11.130

[HTTPS://APP.LEG.WA.GOV/RCW/DEFAULT.ASPX?CITE=11.130&FULL=TRUE](https://app.leg.wa.gov/rcw/default.aspx?cite=11.130&full=true)

**ARTICLE 1 – GENERAL PROVISIONS**

**ARTICLE 2 – MINOR GUARDIANSHIPS**

**ARTICLE 3 – ADULT GUARDIANSHIPS**

**ARTICLE 4 – CONSERVATORSHIPS**

**ARTICLE 5 – OTHER PROTECTIVE  
ARRANGEMENTS**

**ARTICLE 6 - FORMS**

**ARTICLE 7 – GRIEVANCES AND  
SUPPORTED DECISION MAKING**

**ARTICLE 8 - MISCELLANEOUS**

**COURT FORMS AND PROCEDURES  
NEW ADULT FORMS WILL BE AVAILABLE PRIOR TO  
1/1/2022**

❖ **MODEL FORMS - ON STATE COURTS WEBSITE:**

[HTTPS://WWW.COURTS.WA.GOV/FORMS/](https://www.courts.wa.gov/forms/)

❖ **SOME COUNTIES USE THEIR OWN FORMS; LOCAL PROCEDURES**

# LAY GUARDIAN TRAINING



Most guardians and conservators – are “lay guardians” – family or friends

Required to complete training about the responsibilities – New Training will be available prior to January 1, 2022:

<https://www.courts.wa.gov/guardianportal/>

# EXISTING GUARDIANSHIPS

- ❖ LETTERS OF GUARDIANSHIP – CONTINUE TO BE EFFECTIVE
- ❖ NEW LAW APPLIES AFTER JANUARY 1, 2022, ... CAVEAT... COURT COULD FIND OLD LAW APPLICABLE IF PARTIES RIGHTS PREJUDICED BY THE APPLICATION OF NEW LAW

# BIG STATUTE – OVERVIEW ONLY



Lots of other aspects – e.g., emergency guardianships and conservatorships, new language describing basis for appointing a guardian or conservator, minor conservatorship differences, etc.

**STAY TUNED!**



# The New State Minor Guardianship Law: A Brief Overview for Tribal Kinship Navigators

Presented by Celeste Miller  
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# Introduction – Who am I?



- Statewide Kinship Care Legal Aid Coordinator
- Started in this position in September 2019.
- Seven years experience with my own family law solo practice, where I offered a sliding scale.
- Past chair of the Low Bono Section – a group of Washington attorneys who offer sliding scale fees and are dedicated to improving access to the legal system.
- I went to law school with the goal of working in legal aid (free legal help to low-income clients)
- I have an MSW from before law school – I always knew I wanted to help youth and families.
- My office is in Seattle but my job is statewide.

# What do I do?

- Create resources for attorneys so they can help kinship caregivers.
- Work with volunteer lawyer programs to help set up more legal help for kinship caregivers.
- Work with Kinship Navigators to provide resources and connections to legal help.
- Create trainings and materials for attorneys and for kinship caregivers.

## What I do not do:

- I do not represent individual clients.
- I cannot give specific legal advice about someone's personal situation.
  - But I will offer to send resources and information about how to find an attorney or legal advice.

# Minor Guardianships have replaced Nonparent Custody in WA State Law

- The Uniform Guardianship Act (UGA) has a full section for Minor Guardianships.
  - This law is RCW11.130
- The Minor Guardianships replace Nonparent Custody.
- The Nonparent Custody law (RCW 26.10) is fully repealed.
- If someone has a Nonparent Custody order from before 2021, it is still valid.
- Going forward, the way a kinship caregiver would seek custody *under state law* would be via Minor Guardianship.

# Does the Indian Child Welfare Act (ICWA) apply?

- Yes.
- Just as it did with Nonparent Custody and still does with dependencies and other cases involving where a child will live.
- Anytime a Minor Guardianship case is filed in state court, the person filing it *must* notify the tribe if the child is a member of the tribe or is eligible to become a member of a tribe.
- The tribe can then request that the case be transferred to tribal court, or get involved in the case in state court, or decline jurisdiction (keeping the case in the state court).

# When Might this State Law Affect Tribal Members?

- If there is a person seeking custody of a child who is ICWA eligible but the child lives off the reservation, the case could proceed in state court for certain reasons.
  - The tribe could decline jurisdiction.
  - The tribe could intervene in the state court case and be involved.
  - If either parent of the child objects to the case being transferred to tribal court it will stay in state court.
- NOTE: If a kinship caregiver is a tribal member and lives on the reservation, and is seeking custody of a child who is also a tribal member, most likely they will be going through the process under their tribal codes in tribal court.

# Who can file a Minor Guardianship?

- The person who wants to be the guardian.
- The youth who wants a guardian.
- A person who believes the child needs a guardian, but who is proposing someone else to be the guardian.



- How much does it cost?
  - There is no filing fee if:
    - The potential guardian is related to the child and is not a professional guardian.



# Who must be served papers?

- Tier 1 Notice is a list of who must be **personally served**.
  - Personal Service means the papers are handed over to them in person. By an adult who is NOT involved in the case.
- The child's parents.
- The child if they are 12 or older (unless the petitioner get a special order from the court).
- Any current guardian or nonparent custodian.

# Who must be given notice? Tier 2 Notice?

- Tier 2 Notice is a list of people who the petitioner must send the papers to in the mail.
  - If they have a good reason they may ask the court to let them not send the papers to someone if it could harm the child.

- TIER 2 List:
  - any adult with primary care and custody of the minor who is not a parent, guardian or person with non-parental custody under RCW 26.10
  - each person that had primary care or custody of the minor for *at least sixty days during the two years* immediately before the filing of the petition or for *at least seven hundred thirty days during the five years* immediately before the filing of the petition,
  - grandparents,
  - adult siblings, etc.

# Do the Parents get Free Attorneys?

- The parents **will** get a free, court appointed lawyer IF:
  - 1) They are indigent. This means low-income enough to qualify for a public defender, AND
  - 2) they object to the guardianship.
- If they agree, they don't have to be given a lawyer.
- If the court thinks the parent needs a lawyer, the court **MAY** appoint one even if the parent is not indigent.
  - This is not required and will probably not happen often.

Note: The parents can hire private attorneys if they have the means.

# Does the Child get an Attorney?

- They MAY (again, this is not a requirement, just a possibility) if:
  - 1) they are over 12 and they ask for one, OR
  - 2) the GAL recommends one, OR
  - 3) the court decides that the child needs one.
- NOTE: The child can have a private attorney or an attorney from a nonprofit/volunteer attorney.

# What Other Rights Does the Child Have in the Case?

- The right to be served the paperwork if they are over 12. There is a process to ask to block them from seeing it if they do not have a lawyer.
- The right to attend all hearings unless they are too immature or it would be harmful to them to attend. The court decides about this.
- The right to participate in the court case.
- The right to have a Court Visitor (if they don't have a lawyer) who will report on the child's views about the case.

# What Does the Petitioner Have to Prove to Get Guardianship of a Child?

- It is in the child's best interests to have the guardian, and
- that no parent of the child is **willing or able** to exercise parenting functions as defined by the law.
  - Parenting Functions are defined in RCW 26.09.004 and include attending to: the child's needs, education, development, safety, relationships, and financial support of the child.
- They must show this with clear and convincing evidence.
  - That means they need really strong evidence to convince the judge.
- or that all parents' rights have been legally terminated (this would be by the state in a termination trial, or through adoption),
- or the parents all agree to the guardianship.

# What Rights and Responsibilities Does a Guardian Have?

- All the duties and responsibilities of a parent in terms of support, care, education, health, safety, and welfare.
- physical custody of the child.
- Consent to health care, treatment, or service for the minor.
- Manage the minor's funds, apply for benefits and services for the child, and expend funds in trust for the child's care if applicable.
  - Note – if the child has considerable assets, an conservatorship is an option.
- The court can also authorize a guardian to consent to adoption of the minor **if no parent** of the minor is still alive.

# How Can the Parents Get Custody Back?

- They must show that the **basis for creating the guardianship no longer exists.**
  - This means they must show how they have changed or resolved the problems that caused them to lose custody.

- Even if they show that the reasons they lost custody are resolved, the court can continue the guardianship if the court finds that:
  - 1) termination would be harmful to the minor and
  - 2) the minor's interest in continuing the guardianship outweighs the parent's interest in getting their rights to make decisions about the minor back.



# Can Parents have visits? Can the Petitioner Get Child Support?

- Yes, a visit schedule can be set up with parents when they have guardianship.
- The visits can be limited or supervised, depending on what the court decides.
- Yes, the parents can be required to pay child support to a legal guardian.
- Child support and the visits are determined by the court when the guardianship is created.

## Can the Petitioner get a Protection Order?

- There is an option to ask for a protection order when they are asking for a guardianship.
- But they have to file the request for the protection order at the same time or soon after.
- There is a way to ask for an immediate restraining order if they apply for an **emergency guardianship**.
- This is a separate form and process and it only lasts 60 days.

## Is there Emergency Guardianship?

- Yes. This is a separate case that a person can file to get immediate, emergency guardianship.
- There are forms specifically for this type of case.
- The petitioner must show the judge that there is no other person able to take care of the child, and that if they are not appointed as the emergency guardian, the child could be in danger of **substantial** harm.
- These last 60 days but can be extended once.
- These can be combined with a regular guardianship.

# Can the Parent Name a Kinship Caregiver as a Guardian in Case Something Happens in the Future?

- Yes, this is called **Standby Guardianship**.
- This is for planning ahead – if a parent knows they are very sick, or that they might be deported suddenly, for example.
- The parent has to set this up and name the kinship caregiver as the standby guardian.

# What is the Power of Attorney For Custody?

- This is different from guardianship.
- The parent signs a form granting custody for up to 24 months.
- There is a sample form at Washington Law Help under Family and Safety: Nonparents Caring for Children.
- This can include custody and other parental powers.
- **IMPORTANT:** The parent can **cancel** it at any time, as long as they do it in writing.
  - This is useful if you and the parent are in agreement about the temporary custody.
  - This does not have the power of a court order.