

Institute on Guardianship & Conservatorship

The New Guardianship Laws

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Sponsored by ARC of Iowa

Hallagan Education Center

Mercy Medical Center

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This PowerPoint presentation is a general summary of the new adult guardianship law and is for informational purposes only. The presentation is not a substitute for legal advice. The information contained in the presentation should not be relied upon with respect to the facts or circumstances of a specific case. If you need or want legal advice about a specific case, you should consult an attorney.

Enactment of House File 610 and House File 591

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

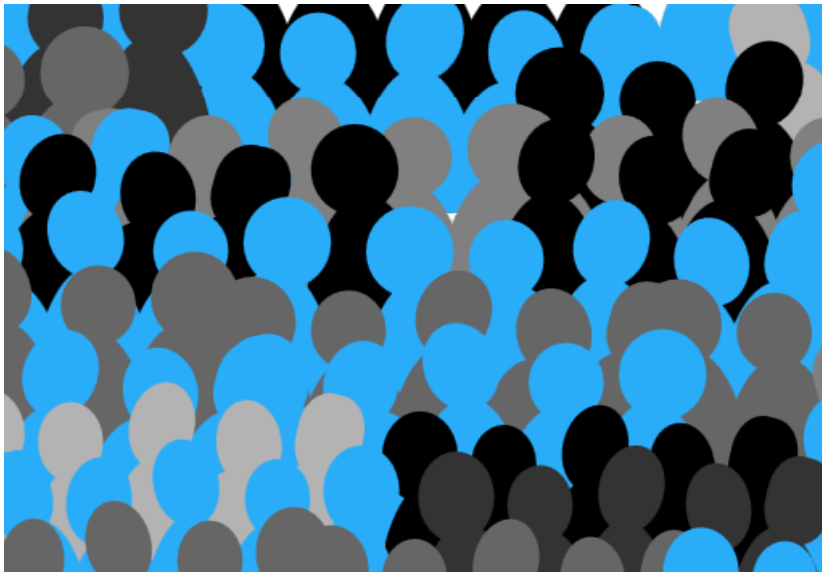
Roadmap

- Introduction
 - Iowa Guardianship and Conservatorship System
 - Iowa Supreme Court Guardianship and Conservatorship Reform Task Force, an Overview
 - HF 610 Goal
- HF 610 Governing Adult Guardianships
 - Opening guardianship
 - Duties and responsibilities of guardians
- HF 610 Governing Adult and Minor Conservatorships
- HF 591 Governing Minor Guardianships

INTRODUCTION



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



IOWA GUARDIANSHIP & CONSERVATORSHIP STUDY

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



CATEGORIES OF ADULTS UNDER GUARDIANSHIP

- Adults of all ages with intellectual disabilities make up the largest category
- Older adults with Alzheimer's Disease and other dementias make up the second largest category
- Adults of all ages with mental illnesses are a significant category
- Adults of all ages with brain injuries are a significant category



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



IOWA SUPREME COURT TASK FORCE MEMBERSHIP

72 members representative of multiple stakeholders

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



FINAL TASK FORCE REPORT

- **Task Force Final Report submitted August 2017**
https://www.iowacourts.gov/static/media/cms/Final_Task_Force_Report_5A992F4D4AF86.pdf
- **272 recommendations addressing multiple major systemic deficiencies**

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



Adult Guardianship Law

(HF 610)

Effective Date 1/1/20

Goal

To strengthen and enhance the procedural and substantive protections for highly vulnerable Iowans—adults with diminished capacity and children



HF 610

OPENING A GUARDIANSHIP



Probate Code Terminology Changes

- HF 610 substitutes the new term “protected person” for the term “ward.” HF 610 § 633.3(32A) specifies that *“Protected person – means a person subject to guardianship or a person subject to conservatorship, or both.”*
- HF 610 also uses the new term “respondent” in connection with conservatorship and guardianship proceedings. HF 610 § 633.3(32B) specifies that *“Respondent – means a person who is alleged to be a person in need of a guardianship or conservatorship, or both.”*
- This change in terminology reflects the fact that the term “ward” is viewed as demeaning and even offensive by members of the disability community and advocates for individuals with disabilities.



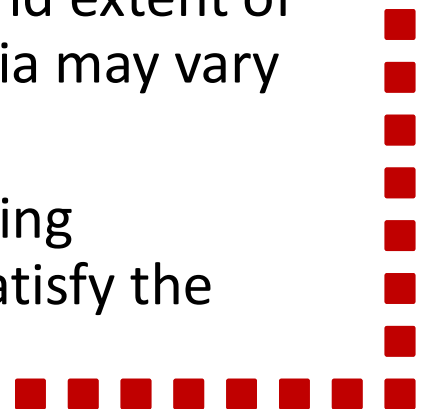
Basis for Appointment of Guardian for Adult

- HF 610 does not alter the basis for the appointment of a guardian for an adult in the existing Probate Code.
- HF 610 § 633.552 provides that the court may appoint a guardian for an adult if the court finds by clear and convincing evidence that all of the following are true:
 - *“a. The decision-making capacity of the respondent is so impaired that the respondent is unable to care for the respondent’s safety, or to provide for necessities such as food, shelter, clothing, or medical care without which physical injury or illness may occur.”*
 - *“b. The appointment of a guardian is in the best interest of the respondent.”*



Basis for Appointment of Guardian for Adult, cont.

- As it has been pointed out, the largest category of adults under guardianship are adults of all ages with intellectual disabilities and the second largest category are older adults with dementia.
- It should be noted that intellectual disabilities of an adult may be mild, moderate, severe, or profound and the nature and extent of the cognitive impairment of older adults with dementia may vary widely.
- Thus, the diagnosis of an adult with a condition involving diminished decision-making capacity may not alone satisfy the substantive criteria for appointing a guardian.



Less Drastic Alternative to Guardianship and Limited Guardianship

- HF 610 §§ 633.551(4) & 633.556(3) requires that less drastic alternatives to guardianship must be considered.
- A less drastic alternative is an approach to meeting an individual's needs which restricts the autonomy, independence, and fewer rights of the individual than would the appointment of a guardian.
- HF 610 § 633.551(3) requires that a limited guardianship rather than full or plenary must be considered.



Options for Less Restrictive Alternatives to Guardianships and Limited Guardianships

- Options include but are not limited to substitute decision makers such as health care power of attorney, case management services, technology and related assistive devices “supported decision-making” (SDM)
- See American Bar Association, PRACTICAL Tool for Lawyers, Checklist and Resource Guide.
https://www.americanbar.org/groups/law_aging/resources/guardianship-law-practice/practical-tool/



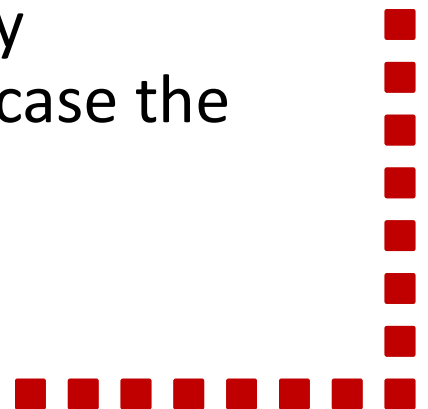
Court Ordered Professional Evaluation

- HF 610 § 633.563 authorizes a court-ordered professional evaluation. But the court is not required to order a professional evaluation.
- The purpose of the professional evaluation is to provide the court with information to use in determining if the respondent has requisite diminished capacity and functional limitations for the appointment of a guardian.
- This information also may be relevant to the court's consideration of less drastic alternative to guardianship and limited guardianship and to modification or termination of guardianship.



Court Ordered Professional Evaluation, cont.

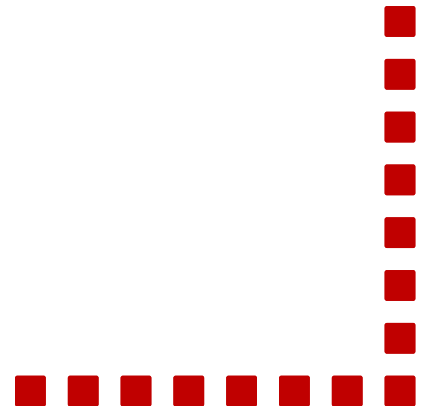
- Evaluation must be conducted by a “licensed physician, psychologist, social worker, or other individual qualified to conduct evaluation appropriate for respondent being assessed.”
- Cost of professional evaluation must be paid by respondent unless he/she is indigent in which case the county pays.



Guardianship Proceedings: Petition and Notice

- Filing of petition
- Contents of petition
- Notice

HF 610 §§ 633.556 – 633.559



Guardianship Proceedings: Emergency and Standby Petitions

➤ Emergency Petition

HF 610 § 633.569

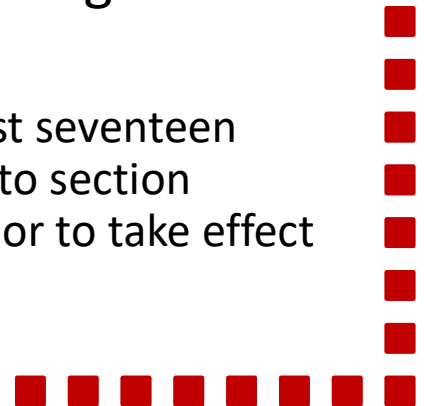
➤ Standby Petition

HF 610 §§ 633.567 & 633.591

➤ Standby Appointment of Guardian for Minor Approaching Majority

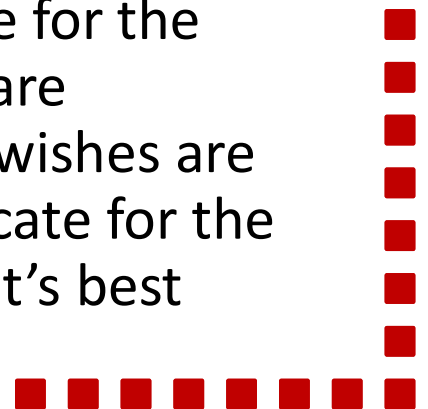
- Any adult with an interest in the welfare of a minor who is at least seventeen years and six months of age may file a verified petition pursuant to section 633.552 to initiate a proceeding to appoint a guardian of the minor to take effect on the minor's eighteenth birthday

HF 591 § 232D.311



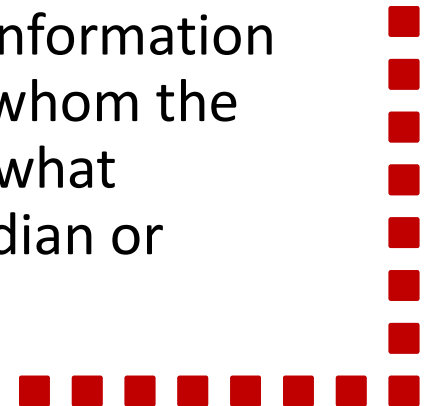
Guardianship Proceedings: Counsel for Respondent

- HF 610 § 633.561 does not alter the existing Probate Code requirements regarding court appointment of counsel to represent an adult respondent for proceedings on the guardianship petition. If the respondent is legally indigent, payment of counsel fees are charged to the county.
- It does clarify that the role of counsel is to “[a]dvocate for the wishes of the respondent to the extent those wishes are reasonably ascertainable,” and “[i]f the respondent’s wishes are not reasonably ascertainable, the attorney shall advocate for the least restrictive alternative consistent with respondent’s best interests.”



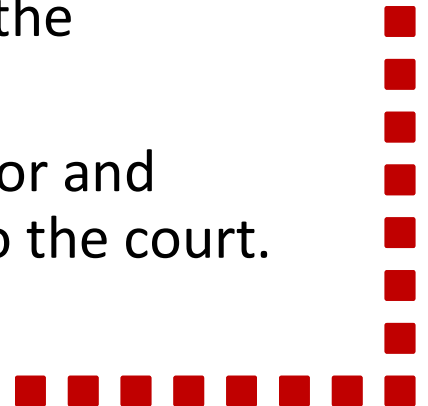
Guardianship Proceedings: Court Visitor

- HF 610 § 633.562 substitutes the term “court visitor” for the term “guardian ad litem.”
- HF 610 provides that the court may, but is not required to, appoint a court visitor if it would be in the best interests of the respondent.
- The purpose of this provision is to ensure that if needed and appropriate, the court has an independent source of information about whether to appoint a guardian or conservator, whom the court should appoint as guardian or conservator, and what authority and powers the court should grant the guardian or conservator.



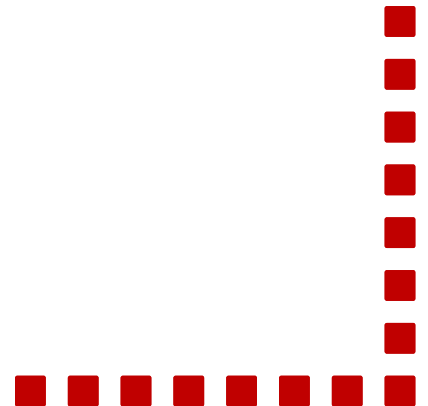
Guardianship Proceedings: Court Visitor, cont.

- HF 610 provides that the court may appoint “any qualified person” including attorneys and other professionals (e.g. social workers, psychologists, health professionals, etc.) depending upon the type of investigation the court requires.
- HF 610 provides that an attorney appointed as a court visitor is prohibited from serving as the attorney representing the respondent.
- HF 610 spells out in detail the duties of the court visitor and requires the court visitor to submit a written report to the court.



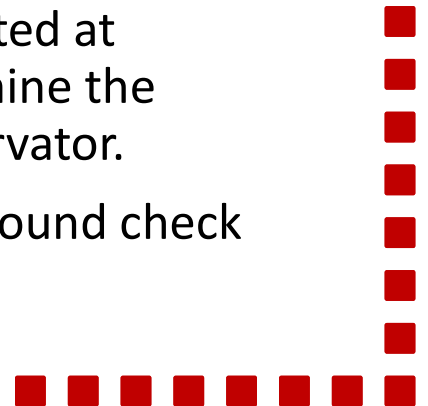
Guardianship Proceedings: Hearing Requirements

- HF 610 § 633.560 delineates a series of specific requirements for hearings on guardianship petitions.



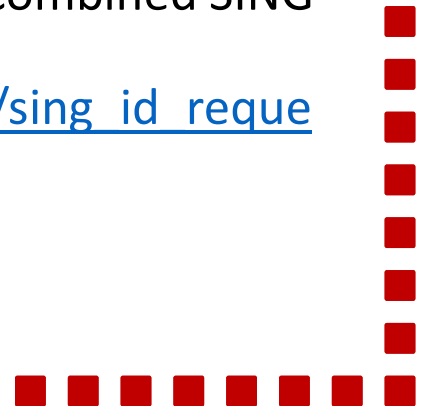
Selection of Guardian: Background Checks

- HF 610 § 633.564 provides the new requirement of a background check of a prospective guardian including: an Iowa criminal record check; a check of the DHS dependent adult and child abuse registries; and a check of the sex offender registry.
- Existing guardians are not required to undergo background checks.
- The background check requirement for a new guardian is directed at ensuring that judges have the information they need to determine the appropriateness of appointing a person as a guardian or conservator.
- The court has discretion as to whether to treat negative background check information as disqualifying for appointment.



Selection of Guardian: Background Checks, cont.

- HF 610 directs the judicial branch in conjunction with the Departments of Public Safety and Human Services and the State Chief Information Officer to establish procedures for electronic access to the single contact repository, known as SING, for combined background checks.
- HF 610 specifies that the petitioner shall be responsible for the payment of the fee for a combined SING background check. The cost of a combined SING background check is \$15.00. See:
https://ocio.iowa.gov/sites/default/files/documents/2018/09/sing_id_request_final_sept_2018_1.pdf



Selection of Guardian: Qualifications

- HF 610 retains the current Probate Code standard that a person must be “qualified and suitable” and be “willing to serve” for appointment of a guardian or conservator for an adult.
- Under this general standard, the court will continue to have broad discretion as to who to appoint as a guardian or conservator.



HF 610

**DUTIES AND RESPONSIBILITIES OF
COURT APPOINTED GUARDIANS**

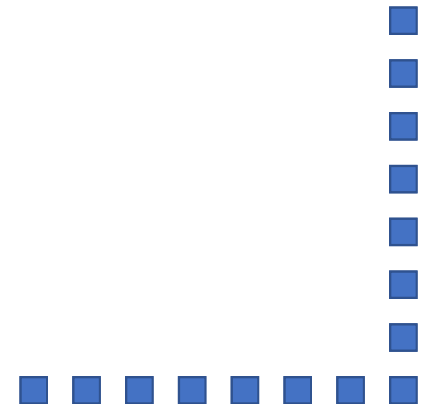


Guardianship Powers Without Additional Prior Court Approval – 633.635

BASED UPON THE EVIDENCE PRESENTED AT THE HEARING TO APPOINT A GUARDIAN, THE COURT MAY GRANT A GUARDIAN THE FOLLOWING POWERS WHICH WILL NOT THEN NEED ADDITIONAL COURT APPROVAL PRIOR TO THE FILING AND APPROVAL OF THE INITIAL CARE PLAN:

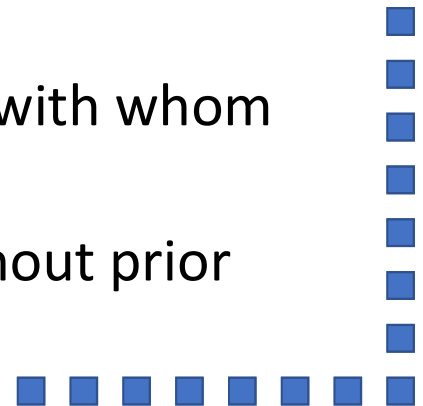
- Make decisions regarding care, maintenance, health, education, welfare, and safety (unless limited by court)
- Establish protected person's permanent residence
- Take reasonable care of clothing, furniture, vehicle, personal effects, and companion animals
- Assist in developing maximum self-reliance
- Consent to and arrange medical, dental and other health care
- Consent to and arrange training and education
- Maintain contact with protected person
- Identify and facilitate supportive relationships
- Any other powers specified by the court

HF 610 § 633.635



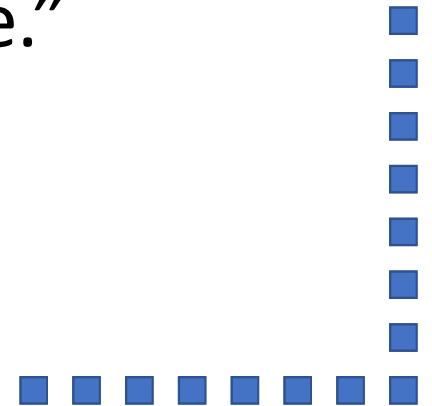
Guardianship Powers Only With Prior Court Approval

- Changing permanent residence to nursing home or other secure facility that restricts protected person's ability to leave or have visitors
- Consenting to:
 - Withholding of life-sustaining procedures
 - Performance of abortion on protected person
 - Sterilization of protected person
- Denying communication, visits or interaction with person with whom the protected person has expressed a desire to interact
- Reality = anything else that is not expressly permitted without prior approval of the court



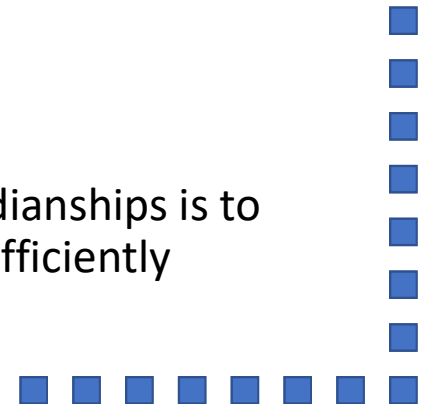
Guardian Consent to Health Care

- The new law eliminates the requirement that a guardian obtain specific prior court approval “for any major elective surgery or any other nonemergency major medical procedure.”



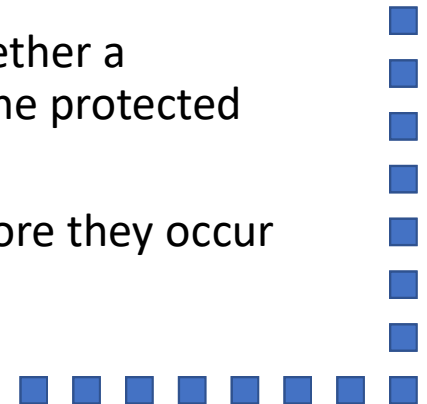
Problems with Existing Court Monitoring and Reporting Requirements

1. The court is required to monitor established guardianships to ensure that guardians are carrying out their duties and responsibilities and that protected persons are receiving needed care and protection.
2. The Iowa Supreme Court Guardianship and Conservatorship Reform Task Force identified major systematic problems in the monitoring of guardianship and conservatorships
 - Retrospective reporting to the court.
 - Inadequate information provided court in annual reports.
 - Lack of proactive court review of annual reports.
3. The overall goal of HF 610 with respect to court monitoring of guardianships is to strengthen the authority and ability of the court to effectively and efficiently monitor guardianships.



Guardian's Reporting Requirements

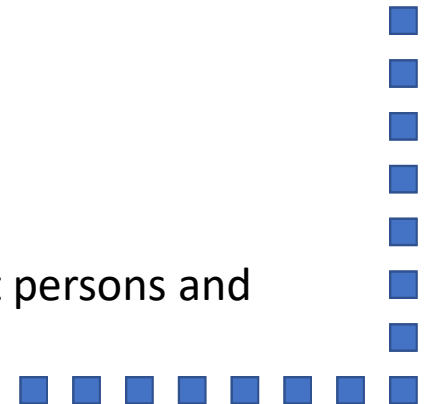
- In addition to existing requirement of annual reports, HF 610 § 633.669 requires filing initial care plan by guardian for court review and approval.
- Benefits of initial care plan
 - Requires guardians to think ahead about the protected person's needs and the services and resources available for those needs and to develop a plan to meet those needs.
 - Enables the court to determine at an early stage to determine whether a guardian is capable of providing or arranging for the provision of the protected person's personal care needs.
 - Increases ability of the court to identify and prevent problems before they occur or before they have negative consequences.



Guardian's Initial Care Plan

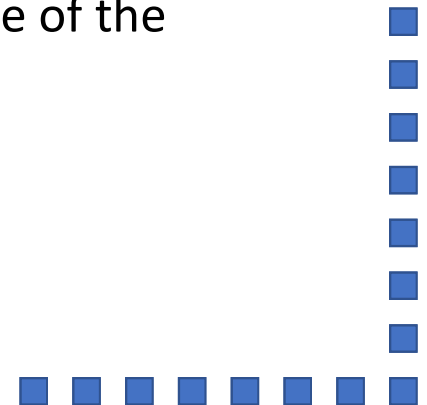
➤ Initial Care Plan

- HF 610 § 633.669 requires filing of a prospective initial care plan by a guardian within 60 days of appointment for court review and approval.
- Contents, if applicable, include:
 - living arrangements of protected person,
 - health needs,
 - needs for professional services,
 - education training and vocational needs,
 - facilitation of participation in social activities, and
 - facilitation of contracts with family members, other significant persons and guardian.



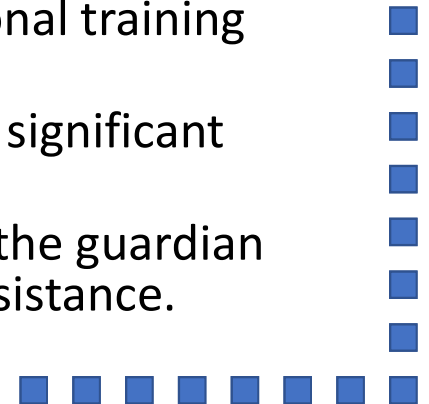
Existing Guardianships and Initial Care Plan Requirement

- The Supreme Court issued an order (<https://www.iowacourts.gov/collections/448/files/934/embedDocument/>) stating that for guardianships in existence prior to 1/1/2020, “Guardians [...] have continuing authority to perform acts concerning the protected person that were authorized prior to January 1, 2020 through the date of the guardian’s previously scheduled annual report.”



Guardian's Annual Reports

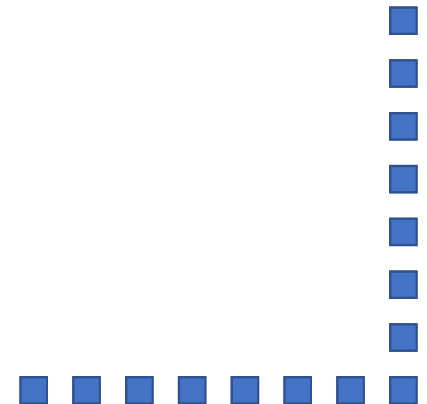
- HF 610 § 633.669 – requires the filing of annual reports by a guardian for court review and approval.
- Contents, if applicable, include:
 - current living arrangements of the protected person,
 - the health status, and health and other professional services provided to the protected person,
 - the protected person's employment status, and the educational training and vocational services provided,
 - contact of the protected person with family members, other significant persons, and guardian,
 - the need for continuation of the guardianship, the ability of the guardian to continue as guardian, and the need of the guardian for assistance.



HF 610 represents a change in the statutory framework for the exercise of powers by guardians with and without court approval. It contemplates that they include in their initial care plans and subsequent annual reports their plans for the upcoming reporting period and request court approval to exercise the powers necessary to carry out those plans during the reporting period.

Waiver of Reporting Requirements

- Iowa Supreme Court rules and HF 610 §§ 633.669 and §633.630(3) prohibit waiver of reporting requirements
- Biennial or triennial reports and waiver of all reports are no longer allowed. Guardianships not required to file reports on an annual basis will have to be converted to an annual reporting basis pursuant to the direction of the court.
- Contact the clerk of court where your guardianship is filed and ask for direction on how to proceed.



Guardianship Forms

- The Iowa Supreme Court has issued user-friendly forms for the guardian's initial care plan and the guardian's annual report.
<https://www.iowacourts.gov/collections/453/files/954/embedDocument/> (Initial Care Plan Report)
<https://www.iowacourts.gov/collections/453/files/957/embedDocument/> (Annual Report)
- The Supreme Court forms must be used by guardians that are not represented by an attorney. Guardians do not have to retain an attorney to fill out and submit these forms.
- These forms are available from the website of the Institute on Guardianship and Conservatorship in fillable PDF format at <https://nhlp.law.uiowa.edu/programs-and-institutes/institute-guardianship-and-conservatorship/fillable-pdf-guardianship-and-conservatorship/>.



Adult and Minor Conservatorship Law

(HF 610)

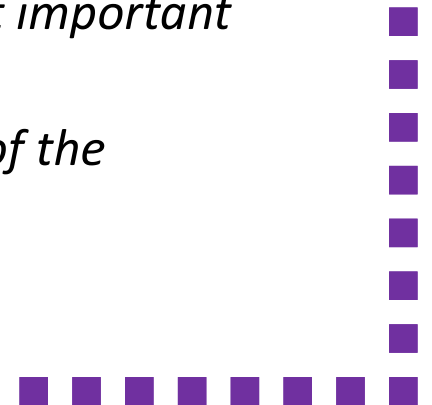
Effective Date 1/1/20

**Amendment of Probate Code Provisions Re Adult and Minor
Conservatorships**



Basis for Appointment of Conservator for Adult

- HF 610 does not alter the basis for the appointment of a conservator for an adult in the existing Probate Code.
- HF 610 § 633.553 provides that the court may appoint a conservator for an adult if the court finds by clear and convincing evidence that both of the following are true:
 - *“a. The decision-making capacity of the respondent is so impaired that the respondent is unable to make, communicate, or carry out important decisions concerning the respondent’s financial affairs.”*
 - *“b. The appointment of a conservator is in the best interest of the respondent.”*



Basis for Appointment of Guardian for Minor

- The existing Probate Code contains no specific criteria for the establishment of a minor conservatorship.
- HF 610 § 633.554 corrects this omission by providing that the court may appoint a conservator for a minor if the court finds by a preponderance of the evidence that conservatorship is in the minor's best interests and any of the following are true:
 - *"1. The minor has funds or other property requiring management or protection that otherwise cannot be provided."*
 - *"2. The minor has or may have financial affairs that may be put at unreasonable risk or hindered because of minor's age."*
 - *"A conservator is needed to obtain or provide funds or other property."*



Conservatorship Proceedings

- HF 610 provisions with respect to conservatorship proceedings (e.g., petition, notice, court-order professional evaluation, hearings, counsel for respondent, court visitor) are the same or similar to the provisions with respect to guardianship proceedings.



Appointment of Conservator

- HF 610 provisions with respect to background checks of proposed conservator and required qualifications of conservator are the same as those for a guardian.
- HF 610 § 633.174 requires new and existing conservators, except financial institutions with Iowa trust powers, to post a surety bond unless the court finds “there is an alternative to a bond that will provide sufficient protection to the assets of the protected person. The bond or bond alternative does not apply to guardians.



Cornerstone of HF 610 = Initial Financial Management Plan

- HF 633.670 requires conservators to file an initial financial management plan within 90 days of appointment

Prospective plan for:

- Protection of assets
- Management and investment of assets
- Budget plan for receipt and expenditure of funds



Benefits of Initial Financial Management Plan

- Requires conservator to think ahead about protected person's needs and the financial resources available to fulfill those needs
- Enables the court to determine at an early stage whether conservator is capable of properly managing protected person's financial affairs
- Increases ability of court to identify and prevent possible misappropriation or misuse of protected person's assets



Conservatorship Annual Reports

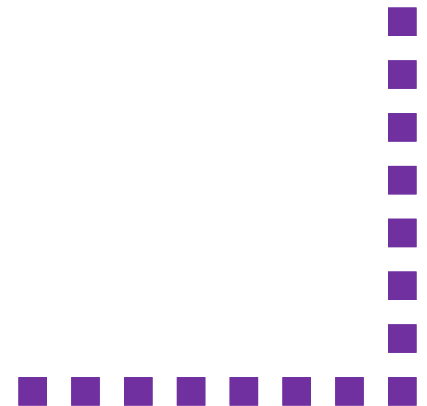
- Cannot be waived
- Similar to current information required, but now requires forward-looking information
 - Budget
 - Changes in plan
- Best practice – file something like an amended initial plan every year



Conservatorship Powers Without Court Approval

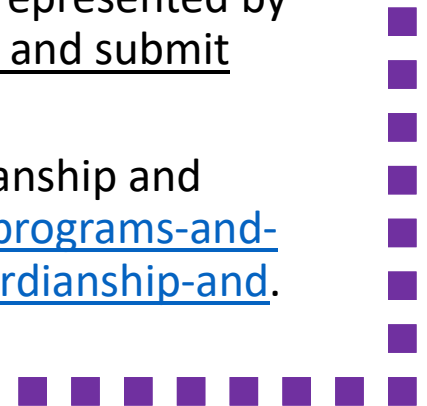
Basically limited to general fiduciary powers set forth in 633.63-.162

- Request information and assets from third parties
- Hire an attorney to assist
- Deposit money and assets in bank
- Sue, be sued, and defend legal actions



Conservatorship Forms

- The Iowa Supreme Court has issued user-friendly forms for the conservator's initial financial management plan and the conservator's annual report.
<https://www.iowacourts.gov/collections/453/files/981/embedDocument/> (Initial Financial Management Plan)
<https://www.iowacourts.gov/collections/453/files/987/embedDocument/> (Annual Report)
- The Supreme Court forms must be used by conservators that are not represented by an attorney. Conservators do not have to retain an attorney to fill out and submit these forms.
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New Minor Guardianship Law

(HF 591)

Effective Date 1/1/20

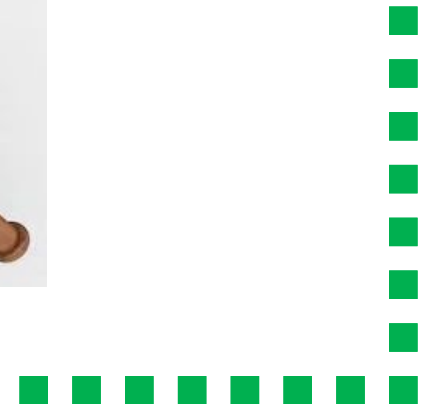
Creates New Juvenile Code Chapter 232D



Transfer of Minor Guardianship Jurisdiction

➤ **HF 591 Transfers Jurisdiction to Juvenile Court from Probate District Court**

- **New Cases**
- **Existing Cases**



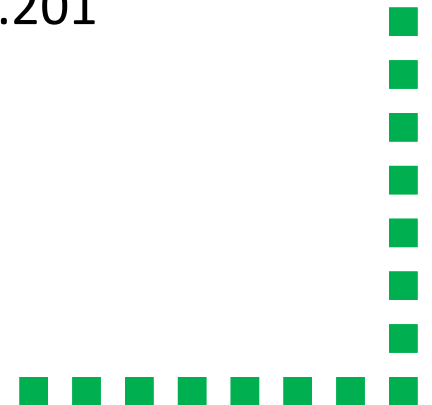
Need and Reasons for Transfer of Jurisdiction

- Juvenile court judges are specialized judges with expertise in handling the parental problems that minor guardianships involve.
- Juvenile court judges follow the “one judge one family” case management approach resulting in continuity and consistence in judicial decision-making and monitoring of case.
- Juvenile court jurisdiction creates better interface between probate court minor guardianship cases and juvenile court CINA cases.



Specific Statutory Criteria for Establishment of Minor Guardianship

- Minor guardianship with parental consent § 232D.203
- Minor guardianship without parental consent § 232D.204
- Other criteria
 - Termination of parental rights in CINA cases § 232D.201
 - Death of parents § 232D.202



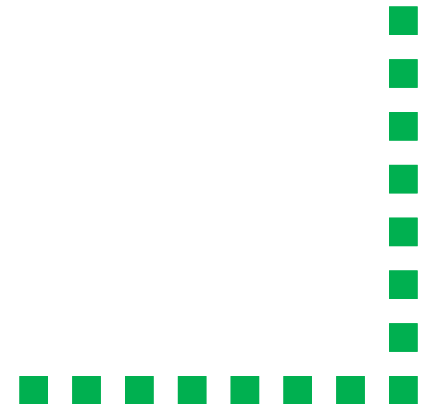
Minor Guardianship Proceedings

- Petition and notice §§ 232D.301 and 232D.302
- Attorney for minor § 232D.303
- Attorney for parent § 232D.304
- Court visitor (formerly called guardian ad litem) § 232D.305
- Hearing on petition § 232D.306



Selection of Guardian for Minor

- Background checks § 232D.307
- Qualifications § 232D.308



QUESTIONS

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