



# Children, Families, Health, and Human Services Interim Committee

## 69th Montana Legislature

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TO: Children, Families, Health, and Human Services Interim Committee  
FROM: Milly Allen, Research Analyst  
RE: HJ 26 Background Materials from Study Sponsor - January 2026

Rep. Brian Close sponsored HJ 26, a study of guardianship and conservatorship in Montana. Rep. Close asked staff to the following documents for committee members.

Committee staff paginated and dated the documents; otherwise, they are presented as submitted by Rep. Close.

Please note that these background materials are not presentation aids for Agenda Item 7.

Contents: Comments on Expressed Committee Concerns and Legislation (5 pages)  
Provisions to Be Reviewed (22 pages)

**COMMENTS ON EXPRESSED COMMITTEE CONCERNS  
AND DRAFT LEGISLATION  
by Rep. Brian F. Close**

**STAKEHOLDER POSITIONS**

The Lt. Governor, the State Bar, AARP and the Disability Community agree on the following reforms:

**Mandatory Training**

**Mandatory Background Checks** with some exception for immediate family members

**Mandatory Certification of Professional Guardians/Conservators**

In regards to Certification, I note that Washington, Alaska, Oregon, Idaho and North Dakota require that persons handling the affairs of multiple people who are not relatives be certified. Below I include draft legislation on that last issue based on North Dakota.

**Provisions of the Uniform Act**

Regarding adoption of parts of the uniform act, the bar seems divided, and the Lt. Governor is opposed. AARP and the disability community support requiring guardian plans. I have not surveyed anyone of the proposed “plan language” notice yet.

In regard to requiring a guardianship plan I note:

The WINGS committee recommended this be adopted  
That the last study bill report on this issue recommended it be adopted  
That it has the full support of the disability community and AARP

**19 states require initial plans, including Alaska, Colorado, Idaho, Oklahoma, and South Dakota, as well as states that have adopted the uniform act.** (The National Center for State Courts has a helpful tool that lists the monitoring requirements each state have.

[Https://www.ncsc.org/resources-courts/guardianship-conservatorship-monitoring-statutes. \)](https://www.ncsc.org/resources-courts/guardianship-conservatorship-monitoring-statutes.)

**These jurisdictions have decided that an initial plan puts everyone (Court, Guardian, and protected person), on the same page and establishes verifiable goals (especially in cases where a protected person’s condition may be subject to improvement).**

With regards to concerns that a plan is a burden, it’s my view that the Court can help play a role in lessening any potential burden by having easily understandable forms. In fact, that Montana Court System has already published a form guardianship plan drafted by Judge Wilson:

1 of 5

Provided by Rep. Brian Close to CFHHS  
For its January 13, 2026 Meeting

<https://courts.mt.gov/forms/guardianship>

I herein resubmit separately provisions of the Uniform Act that AARP and the disability community consider worthy of consideration.

I suggest that potential uniform act provisions be in a bill separate from the other three agreed upon reforms

## CURRENT BILL DRAFT

The current draft makes training and background checks optional rather than mandatory, by requiring each district court judge in each case fashion their own remedy. **No other state in the region takes this approach.** The purpose of reform is to raise standards *across the entire system*. Those of you who served on these committees during the session may recall the testimony of APS on the lack of uniformity between district courts in the area of guardianship. Taking a per judge approach to reform simply introduces additional uncertainty throughout the system. **With the bill's approach, not only will there be lack of uniformity between judicial districts, but within judicial district based on the predilections of each district court judge.**

The plain language provision is a useful addition which I completely agree with.

In response, I have drafted training and background check requirements (based largely on Colorado and North Dakota). Under my drafts, training is mandatory. Background checks are mandatory, with the exception of close family members, who must submit an affidavit of their *bona fides* (subject to the right of a Court to investigate further). So under my draft provisions all lay guardians will receive training and most lay guardians will not have a background check.

Absent from the draft are areas where testimony was received and discussed during the work session. Specifically, sections of the uniform act that require a **guardianship plan, third party standing** to bring issues to the attention of the Court, and **Certification of Professional Guardians**.

If you wish to start with the current draft for training I would change “may” to “shall” and delete the sentence on judges deciding what training a person should receive and simply state that an applicant “will receive training as approved by the Montana Supreme Court (this last provision also fineses the issue of an applicable date: **after bill passage the Supreme Court is in control of implementation**). How training is developed and applied in other states is discussed immediately below.

For background checks I would change “may” to “shall” and then develop exceptions for family members and certain professionals (like a bank trust department). I have prepared such exceptions based on Colorado law and they are at the end of this memo.

## **CONCERNS EXPRESSED AT THE WORK SESSION**

Finally, let me briefly address some concerns raised at the last work session

### **Training as a Barrier**

The purpose of training is to help a lay guardian understand their responsibilities, understand the rights of the person they are protecting, and to help them navigate the system. **It is a help, not a barrier. It helps lay people to be successful in their task.**

Evidence for this is from the states in the region that mandate training. Most training is on line, modular, and only requires a few hours. Some states, like Idaho and Alaska, have had these programs for more than a decade. **This is not a new, experimental, practice.**

**Training is always free.** Usually, it is developed by the state bar in coordination with the State Supreme Court and a local media company. North Dakota informs me that if they had to redo their training from scratch, the development cost would be \$50,000 and the web hosting cost a few thousand dollars a year. Finally, **last October the Estate Section of the Montana State Bar agreed to begin developing training in anticipation of this legislation at no cost to the State.**

Example of online training are at

**Idaho:** <https://isc.idaho.gov/guardianship/guardianship-conservatorship>

**North Dakota** <https://guardianship.ndcourts.gov/>

### **Cost of Background Checks**

I could find no jurisdiction that subsidizes and/or waives the cost of background checks. The reason for that is that **the total cost is just \$40** (\$10 for finger printing and \$30 for processing by the Montana Department of Justice. Note also, the costs are separate: \$10 to the local sheriff's office and \$30 to the Department of Justice. Creating a system to reimburse these entities to relieve applicants of bearing this minimal cost seems administratively cumbersome. **Finally, as included in the draft legislation below, most family members will not have to have background checks but, rather, can certify by affidavit their personal history.**

In conclusion, I am available to assist the committee on these matters. Further, Ms. Considine has been designated by the BETTR Section of the bar to assist the committee in these matters.

## **New section to Title 72 - Defining and requiring Certification of Professional Guardians**

(a) A professional guardian or conservator is a person who:

1. will provide guardianship or conservatorship services for a fee;
2. has rendered guardianship or conservatorship services for three or more persons; and,
3. is not related to the person under guardianship or conservatorship by blood, adoption, marriage, or civil union.

(b) A professional guardian or conservator must be certified by the Center for Guardianship Certification unless waived by the court for good cause.

(c) If a professional guardian or conservator is an entity, including, but not limited to, limited liability organizations and partnerships, it must have a certified guardian or conservator involved in the provision of guardianship or conservatorship services for persons under guardianship or conservatorship.

(d) The court can for good cause require any guardian or conservator to be certified by the Center for Guardianship Certification.

## **New Section to Title - Mandatory Training of Guardians & Background checks**

Section \_\_\_. Qualifications - Guardians & Conservators. An individual proposed to serve as a guardian or a conservator:

(a) Must submit an affidavit stating that the proposed guardian has completed the online guardianship training program established by the Montana Supreme Court and file a certificate of completion with the appointing court before letters of guardianship are issued;

(b) Unless waived by the court for good cause, must provide a criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian; and

(c) Must provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and must provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

(d) Paragraphs (b) of this section shall not apply to the following nominees:

- (i) A parent residing with his or her child who is nominated as a guardian or conservator of his or her child;
- (ii) A child who is nominated as a guardian or conservator of his or her parent;
- (iii) A spouse who is residing with his or her spouse who is nominated as a guardian or conservator of his or her spouse; and
- (iv) Any other person or entity for whom the court, for good cause shown, determines that the requirements shall not apply.

(e) Paragraphs (a), (b) and (c) of this section shall not apply to the following nominees:

- (i) A public administrator nominated as a guardian or conservator;
- (ii) A trust company nominated as a guardian or conservator;
- (iii) A bank nominated as a guardian or conservator;
- (iv) A credit union, savings and loan, or other financial institution nominated as a guardian or conservator pursuant to state law;
- (v) A state or county agency nominated as a guardian or conservator pursuant to state law;
- (vi) A professional guardian or conservator certified by the center for guardianship certification

(f) Nothing in this section shall be construed to prohibit the court from requiring a nominee to obtain additional background information as the court deems necessary to assist the court in determining the fitness of the nominee for the appointment sought by the nominee, including requiring a nominee to obtain fingerprint-based criminal history record checks through the Montana Department of Justice and the federal bureau of investigation. If the court requires a nominee to submit fingerprint-based criminal history record checks, the nominee shall be responsible for providing a complete set of fingerprints to the Montana Department of Justice (or its agent) and for obtaining the fingerprint-based criminal history record checks and presenting them with the acceptance of office. The nominee shall also be responsible for the cost of the fingerprint-based criminal history record checks. When the results of a fingerprint-based criminal history record check of an applicant performed pursuant to this subsection (5) reveal a record of arrest without a disposition, the court shall require that nominee to submit to a name-based judicial record check. The applicant is responsible for the cost of the name-based judicial record check.

**SECTION 117. DISCLOSURE OF BANKRUPTCY OR CRIMINAL HISTORY.**

(a) Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:

(1) is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding; or

(2) been convicted of:

(A) a felony;

(B) a crime involving dishonesty, neglect, violence, or use of physical force; or

(C) other crime relevant to the functions the individual would assume as guardian or conservator.

(b) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crime relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.

(c) If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

**[background checks with exceptions]**

**SECTION 123. THIRD-PARTY ACCEPTANCE OF AUTHORITY OF GUARDIAN OR CONSERVATOR.**

(a) A person must not recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the person has actual knowledge or a reasonable belief that the letters of office of the guardian or conservator are invalid or the conservator or guardian is exceeding or improperly exercising authority granted by the court; or

(2) the person has actual knowledge that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(b) A person may refuse to recognize the authority of a guardian or conservator to act on behalf of an individual subject to guardianship or conservatorship if:

(1) the guardian's or conservator's proposed action would be inconsistent with this [act]; or

(2) the person makes, or has actual knowledge that another person has made, a report to the [government agency providing protective services to adults or children] stating a good-faith belief that the individual subject to guardianship or conservatorship is subject to physical or financial abuse, neglect, exploitation, or abandonment by the guardian or conservator or a person acting for or with the guardian or conservator.

(c) A person that refuses to accept the authority of a guardian or conservator in accordance with subsection (b) may report the refusal and the reason for refusal to the court. The court on receiving the report shall consider whether removal of the guardian or conservator or other action is appropriate.

(d) A guardian or conservator may petition the court to require a third party to accept a decision made by the guardian or conservator on behalf of the individual subject to guardianship or conservatorship.

## SECTION 127. GRIEVANCE AGAINST GUARDIAN OR CONSERVATOR.

(a) An individual who is subject to guardianship or conservatorship, or person interested in the welfare of an individual subject to guardianship or conservatorship, that reasonably believes the guardian or conservator is breaching the guardian's or conservator's fiduciary duty or otherwise acting in a manner inconsistent with this [act] may file a grievance in a record with the court.

(b) Subject to subsection (c), after receiving a grievance under subsection (a), the court:

(1) shall review the grievance and, if necessary to determine the appropriate response, court records related to the guardianship or conservatorship;

(2) shall schedule a hearing if the individual subject to guardianship or conservatorship is an adult and the grievance supports a reasonable belief that:

(A) removal of the guardian and appointment of a successor may be appropriate under Section 318;

(B) termination or modification of the guardianship may be appropriate under Section 319;

(C) removal of the conservator and appointment of a successor may be appropriate under Section 430; or

(D) termination or modification of the conservatorship may be appropriate under Section 431; and

(3) may take any action supported by the evidence, including:

(A) ordering the guardian or conservator to provide the court a report, accounting, inventory, updated plan, or other information;

(B) appointing a guardian ad litem;

(C) appointing an attorney for the individual subject to guardianship or conservatorship; or

(D) holding a hearing.

(c) The court may decline to act under subsection (b) if a similar grievance was filed within the six months preceding the filing of the current grievance and the court followed the procedures of subsection (b) in considering the earlier grievance.

## SECTION 301. BASIS FOR APPOINTMENT OF GUARDIAN FOR ADULT.

(a) On petition and after notice and hearing, the court may:

(1) appoint a guardian for an adult if the court finds by clear-and-convincing evidence that:

(A) the respondent lacks the ability to meet essential requirements for physical health, safety, or self-care because the respondent is unable to receive and evaluate information or make or communicate decisions, even with appropriate supportive services, technological assistance, or supported decision making; and

(B) the respondent's identified needs cannot be met by a protective arrangement instead of guardianship or other less restrictive alternative; or

(2) with appropriate findings, treat the petition as one for a conservatorship under [Article] 4 or protective arrangement under [Article] 5, issue any appropriate order, or dismiss the proceeding.

(b) The court shall grant a guardian appointed under subsection (a) only those powers necessitated by the demonstrated needs and limitations of the respondent and issue orders that will encourage development of the respondent's maximum self-determination and independence. The court may not establish a full guardianship if a limited guardianship, protective

arrangement instead of guardianship, or other less restrictive alternatives would meet the needs of the respondent.

#### **SECTION 316. GUARDIAN'S PLAN.**

(a) A guardian for an adult, not later than 60 days after appointment and when there is a significant change in circumstances, or the guardian seeks to deviate significantly from the guardian's plan, shall file with the court a plan for the care of the adult. The plan must be based on the needs of the adult and take into account the best interest of the adult as well as the adult's preferences, values, and prior directions, to the extent known to or reasonably ascertainable by the guardian. The guardian shall include in the plan:

(1) the living arrangement, services, and supports the guardian expects to arrange, facilitate, or continue for the adult;

(2) social and educational activities the guardian expects to facilitate on behalf of the adult;

(3) any person with whom the adult has a close personal relationship or relationship involving regular visitation and any plan the guardian has for facilitating visits with the person;

(4) the anticipated nature and frequency of the guardian's visits and communication with the adult;

(5) goals for the adult, including any goal related to the restoration of the adult's rights, and how the guardian anticipates achieving the goals;

(6) whether the adult has an existing plan and, if so, whether the guardian's plan is consistent with the adult's plan; and

(7) a statement or list of the amount the guardian proposes to charge for each service the guardian anticipates providing to the adult.

(b) A guardian shall give notice of the filing of the guardian's plan under subsection (a), together with a copy of the plan, to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines. The notice must include a statement of the right to object to the plan and be given not later than 14 days after the filing.

(c) An adult subject to guardianship and any person entitled under subsection (b) to receive notice and a copy of the guardian's plan may object to the plan.

(d) The court shall review the guardian's plan filed under subsection (a) and determine whether to approve the plan or require a new plan. In deciding whether to approve the plan, the court shall consider an objection under subsection (c) and whether the plan is consistent with the guardian's duties and powers under Sections 313 and 314. The court may not approve the plan until [30] days after its filing.

(e) After the guardian's plan filed under this section is approved by the court, the guardian shall provide a copy of the plan to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines.

## **SECTION 317. GUARDIAN'S REPORT; MONITORING OF GUARDIANSHIP.**

(a) A guardian for an adult, not later than 60 days after appointment and at least annually thereafter, shall file with the court a report in a record regarding the condition of the adult and accounting for funds and other property in the guardian's possession or subject to the guardian's control.

(b) A report under subsection (a) must state or contain:

(1) the mental, physical, and social condition of the adult;  
(2) the living arrangements of the adult during the reporting period;

(3) a summary of the supported decision making, technological assistance, medical services, educational and vocational services, and other supports and services provided to the adult and the guardian's opinion as to the adequacy of the adult's care;

(4) a summary of the guardian's visits with the adult, including the dates of the visits;

(5) action taken on behalf of the adult;

(6) the extent to which the adult has participated in decision making;

(7) if the adult is living in a [mental health] facility or living in a facility that provides the adult with health-care or other personal services, whether the guardian considers the facility's current plan for support, care, treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interest;

(8) anything of more than de minimis value which the guardian, any individual who resides with the guardian, or the spouse, [domestic partner,] parent, child, or sibling of the guardian has received from an individual providing goods or services to the adult;

(9) if the guardian delegated a power to an agent, the power delegated and the reason for the delegation;

(10) any business relation the guardian has with a person the guardian has paid or that has benefited from the property of the adult;

(11) a copy of the guardian's most recently approved plan under Section 316 and a statement whether the guardian has deviated from the plan and, if so, how the guardian has deviated and why;

(12) plans for future care and support of the adult;

(13) a recommendation as to the need for continued guardianship and any recommended change in the scope of the guardianship; and

(14) whether any co-guardian or successor guardian appointed to serve when a designated event occurs is alive and able to serve.

(c) The court may appoint a [visitor] to review a report submitted under this section or a guardian's plan submitted under Section 316, interview the guardian or adult subject to guardianship, or investigate any other matter involving the guardianship.

(d) Notice of the filing under this section of a guardian's report, together with a copy of the report, must be given to the adult subject to guardianship, a person entitled to notice under Section 310(e) or a subsequent order, and any other person the court determines. The notice and report must be given not later than 14 days after the filing.

(e) The court shall establish procedures for monitoring a report submitted under this section and review each report at least annually to determine whether:

(1) the report provides sufficient information to establish the guardian has complied with the guardian's duties;

(2) the guardianship should continue; and

(3) the guardian's requested fees, if any, should be approved.

(f) If the court determines there is reason to believe a guardian for an adult has not complied with the guardian's duties or the guardianship should be modified or terminated, the court:

(1) shall notify the adult, the guardian, and any other person entitled to notice under Section 310(e) or a subsequent order;

(2) may require additional information from the guardian;

(3) may appoint a [visitor] to interview the adult or guardian or investigate any matter involving the guardianship; and

(4) consistent with Sections 318 and 319, may hold a hearing to consider removal of the guardian, termination of the guardianship, or a change in the powers granted to the guardian or terms of the guardianship.

(g) If the court has reason to believe fees requested by a guardian for an adult are not reasonable, the court shall hold a hearing to determine whether to adjust the requested fees.

(h) A guardian for an adult may petition the court for approval of a report filed under this section. The court after review may approve the report. If the court approves the report, there is a rebuttable presumption the report is accurate as to a matter adequately disclosed in the report.

#### **SECTION 311. NOTICE OF ORDER OF APPOINTMENT; RIGHTS.**

(a) A guardian appointed under Section 309 shall give the adult subject to guardianship and all other persons given notice under Section 303 a copy of the order of appointment, together with notice of the right to request termination or modification. The order and notice must be given not later than 14 days after the appointment.

(b) Not later than 30 days after appointment of a guardian under Section 309, the court shall give to the adult subject to guardianship, the guardian, and any other person entitled to notice under Section 310(e) or a subsequent order a statement of the rights of the adult subject to guardianship and procedures to seek relief if the adult is denied those rights.

The statement must be in at least 16-point font, in plain language, and, to the extent feasible, in a language in which the adult subject to guardianship is proficient. The statement must notify the adult subject to guardianship of the right to:

(1) seek termination or modification of the guardianship, or removal of the guardian, and choose an attorney to represent the adult in these matters;

(2) be involved in decisions affecting the adult, including decisions about the adult's care, dwelling, activities, or social interactions, to the extent reasonably feasible;

(3) be involved in health-care decision making to the extent reasonably feasible and supported in understanding the risks and benefits of health-care options to the extent reasonably feasible;

(4) be notified at least 14 days before a change in the adult's primary dwelling or permanent move to a nursing home, mental-health facility, or other facility that places restrictions on the individual's ability to leave or have visitors unless the change or move is proposed in the guardian's plan under Section 316 or authorized by the court by specific order;

(5) object to a change or move described in paragraph (4) and the process for objecting;

(6) communicate, visit, or interact with others, including receiving visitors, and making or receiving telephone calls, personal mail, or electronic communications, including through social media, unless:

(A) the guardian has been authorized by the court by specific order to restrict communications, visits, or interactions;

(B) a protective order or protective arrangement instead of guardianship is in effect that limits contact between the adult and a person; or

(C) the guardian has good cause to believe restriction is necessary because interaction with a specified person poses a risk of significant physical, psychological, or financial harm to the adult, and the restriction is:

(i) for a period of not more than seven business days if the person has a family or pre-existing social relationship with the adult; or

(ii) for a period of not more than 60 days if the person does not have a family or pre-existing social relationship with the adult;

(7) receive a copy of the guardian's plan under Section 316 and the guardian's report under Section 317; and

(8) object to the guardian's plan or report.

No waiver of reports

standardized reports

broaden category of who can evaluate? (Physician)

conservatorship by preponderance

COG for professionals

Mandatory education

Background check

## Guardianship Reform Effort Status

Probable support from LT Governor for

Mandatory Training before Appointment

Background checks (with exceptions for family members, in which case

An affidavit will be used)

Certification of Professional Guardians

Provisions of the Uniform act that appear to have support from the LT Governor & BETTR section to the bar

Mandatory Guardian plan with annual updates

Third party standing to intervene in a guardianship

Right of third party (banks) to refuse service to a guardian

Notice of Right to a person subject to guardianship

Open Items:

Centralized Registration & Audit of Guardians and Conservators

State support for a volunteer guardian system such as Kansas

## Idaho

(4) No convicted felon, or person whose residence is the incapacitated person's proposed residence or will be frequented by the incapacitated person and is frequented by a convicted felon, shall be appointed as a guardian of an incapacitated person unless the court finds by clear and convincing evidence that such appointment is in the best interests of the incapacitated person.

## ND

<https://www.ndcourts.gov/legal-resources/rules/ndsupctadminr/59>

N.D. Sup. Ct. Admin. R. 59(B)(2)  
Requires professional and non-professional  
guardians to provide criminal history  
record check report to the appointing

## Idaho project fund

### TITLE 31

### COUNTIES AND COUNTY LAW

### CHAPTER 32

### FEES

31-3201G. guardianship and conservatorship project FUND. (1) In addition to any other filing and reporting fees applicable to guardianships and conservatorships, the court shall charge the following fees:

- (a) Fifty dollars (\$50.00) for filing cases involving guardianships or conservatorships;
- (b) Forty-one dollars (\$41.00) for reports required to be filed with the court by conservators; and

- (c) Twenty-five dollars (\$25.00) for reports required to be filed with the court by guardians.
- (2) The additional fees set forth in paragraphs (a), (b) and (c) of subsection (1) of this section shall be paid to the county treasurer, who shall pay such fees to the state treasurer for deposit in the guardianship and conservatorship project fund, which is hereby created in the state treasury. The fund shall be administered by the Idaho supreme court and shall consist of fees as provided in this section, any moneys recovered pursuant to section 15-5-314(2), Idaho Code, and any funds as may be appropriated by the legislature, grants, donations and moneys from other sources.
- (3) Moneys in the fund shall be expended exclusively for the development of a project which shall be designed to improve reporting and monitoring systems and processes for the protection of persons and their assets where a guardian or conservator has been appointed. Elements of the project may include, but are not limited to, the following:
  - (a) The adoption of standards of practice for guardians;
  - (b) A requirement that guardians be registered;
  - (c) Consideration of an office of the public guardian in counties in which the project operates;
  - (d) A review of the strengths of Idaho law regarding the treatment and care of developmentally disabled persons; and
  - (e) If federal or grant funding is available, funding for adult protection services to seek guardians in cases for which volunteers cannot be enlisted.
- (4) The supreme court shall report annually to the senate judiciary and rules committee and the house judiciary, rules and administration committee regarding the progress of the project.

**History:**

[31-3201G, added 2005, ch. 55, sec. 1, p. 209; am. 2014, ch. 164, sec. 6, p. 464.]

## Administrative Rule 59 - GUARDIANS

Effective Date: 8/11/2021

**Section 1. Purpose.** This rule establishes qualifications and training requirements for nonprofessional and professional guardians appointed under N.D.C.C. ch. 30.1-28. For purposes of this rule, nonprofessional guardian means an individual who serves as guardian for two or fewer individuals at the same time, and professional guardian means an individual or entity that serves as guardian for three or more individuals at the same time, an individual or entity appointed to serve as a public guardian or administrator, or an individual or entity that holds itself out as providing guardianship services for hire. This rule does not apply to emergency guardians appointed under N.D.C.C. § 30.1-28-10.1.

**Section 2. Qualifications - Nonprofessional Guardian.** An individual proposed to serve as a nonprofessional guardian:

- (a) Must submit an affidavit stating that the proposed guardian has completed the online guardianship training program established by the North Dakota supreme court and file a certificate of completion with the appointing court before letters of guardianship are issued;
- (b) Unless waived by the court, must provide a criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian; and
- (c) Must provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child and must provide a release

authorizing access to any record information maintained by an agency in this or another state or a federal agency.

**Section 3. Qualifications – Professional Guardian (Entity).** An entity proposed to serve as a professional guardian:

- (a) Must be accredited through the Council on Accreditation or its employed guardians must possess certification through the Center for Guardianship Certification;
- (b) Must provide to the court considering the petition for appointment as a guardian an affidavit stating whether any individual who will provide guardianship services for the ward has been investigated for a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child or there has been a substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian;
- (c) Must provide to the court considering the petition for appointment as a guardian an affidavit stating whether any individual who will provide guardianship services for the ward has been the subject of a substantive disciplinary order issued by a licensing entity or by an agency accredited through the Council on Accreditation;
- (d) Must provide to the court considering the petition for appointment as a guardian an affidavit indicating the entity under the auspices of which any individual who will provide guardianship services has obtained a release authorizing access to any record information maintained by an agency in this or another state or a federal agency, a criminal history record check report and the results of a background inquiry for offenses related to theft, fraud, or the abuse, neglect, or exploitation of an adult or child with respect to any individual who will provide guardianship services and indicating the results of the report and inquiry; and
- (e) Must provide to the court considering the petition for appointment as a guardian an affidavit indicating that all individuals employed by the entity

to serve as a guardian have completed the online guardianship training program established by the North Dakota supreme court.

Section 4. Qualifications – Professional Guardian (Individual). An individual proposed to serve as a professional guardian, whether or not employed by a professional guardian entity:

- (a) Must possess certification through the Center for Guardianship Certification;
- (b) Must submit an affidavit that the proposed guardian has completed the online guardianship training program established by the North Dakota Supreme Court and file a certificate of completion with the appointing court before letters of guardianship are issued;
- (c) Unless waived by the court, must provide a criminal history record check report to the appointing court before the hearing on the petition to appoint a guardian; and
- (d) Must provide to the appointing court before the hearing on the petition to appoint the guardian an affidavit stating whether the proposed guardian has been investigated for a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child, there has been a substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian, or the guardian has been the subject of any disciplinary proceeding by a licensing entity or by an agency accredited through the Council on Accreditation, and must provide a release authorizing access to any record information maintained by an agency in this or another state or a federal agency.

Section 5. Criminal convictions – effect on appointment as guardian.

- (a) An individual may not be appointed as a professional and nonprofessional guardian if the individual has been found guilty of, pled guilty to, or pled no contest to:

(1) An offense described in N.D.C.C. ch. 12.1-16, homicide: § 12.1-17-01, simple assault, if a class C felony under subdivision a of subsection 2 of that section; § 12.1-17-01.1, assault; § 12.1-17-01.2, domestic violence: § 12.1-17-02, aggravated assault; § 12.1-17-03, reckless endangerment; § 12.1-17-04, terrorizing: § 12.1-17-06, criminal coercion: § 12.1-17-07.1, stalking: § 12.1-17-12, assault or homicide while fleeing a peace officer: ch. 12.1-18, kidnapping: § 12.1-20-03, gross sexual imposition: § 12.1-20-03.1, continuous sexual abuse of a child; § 12.1-20-04, sexual imposition: § 12.1-20-05, corruption or solicitation of minors: § 12.1-20-05.1, luring minors by computer or other electronic means: § 12.1-20-06, sexual abuse of wards: § 12.1-20-06.1, sexual exploitation by therapist: § 12.1-20-07, sexual assault: § 12.1-20-12.3, sexual extortion: § 12.1-21-01, arson: § 12.1-22-01, robbery: or § 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ch. 12.1-27.2, sexual performances by children: ch. 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking: or § 12.1-29-01, promoting prostitution: § 12.1-29-02, facilitating prostitution: § 12.1-31-05, child procurement: § 12.1-31-07, endangering an eligible adult: § 12.1-31-07.1, exploitation of an eligible adult: § 14-09-22, abuse of a child: § 14-09-22.1, neglect of a child, subsection 1 of section § 26.1-02.1-02.1, fraudulent insurance acts: or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any enumerated North Dakota statutes: or

(2) An offense, other than an offense identified in subsection 5(a)(1), if the appointing court determines that the individual seeking appointment as a professional or nonprofessional guardian has not been sufficiently rehabilitated.

(b) For the purposes of subsection 5(a)(2), the court:

- (1) May not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment without subsequent charge or conviction has elapsed, unless sufficient evidence is provided of rehabilitation: and
- (2) Must treat completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as *prima facie* evidence of sufficient rehabilitation.

(c) The offenses enumerated in subsection 5(a)(1) have a direct bearing on the proposed professional or nonprofessional guardian's ability to provide guardianship services.

Section 6. Notification - professional and nonprofessional guardians. The guardian must notify the unit administrator in each administrative unit in which the guardian provides guardianship services that the guardian has been charged with a criminal offense related to fraud, theft, or abuse, neglect or exploitation of an adult or child or there has been a substantiated instance of abuse, neglect, or exploitation of an adult or child by the guardian. Where the guardian is or was employed by an entity, the entity is also required to provide notification.

Section 7. Rule Implementation. This rule applies to all guardianships established after the effective date. For active guardianships established prior to the effective date of this rule, the guardian must complete the requirements above and must submit the required documentation to the court with jurisdiction over the guardianship within 30 months from the March 1, 2018 effective date of this rule.

755 ILCS 5/13-1.2 Certification Requirement. Each person appointed as a public guardian by the governor shall be certified as a National Certified Guardian by the Center for Guardianship Certification within 6 months after his or her appointment. The Guardianship and Advocacy Commission shall provide public guardians with professional training opportunities and facilitate testing and certification opportunities at locations in Springfield and Chicago with the Center for Guardianship Certification. The cost of certification shall be considered an expense connected with the operation of the public guardian's office within the meaning of subsection (b) of Section 13-3.1 of this Article.

**Idaho Court Administrative Rule 54.6. Professional Guardian and Conservator Certification.**

- (a) A professional guardian or conservator is a person who:
  - 1. will provide guardianship or conservatorship services for a fee;
  - 2. has rendered guardianship or conservatorship services for three or more persons; and,
  - 3. is not related to the person under guardianship or conservatorship by blood, adoption, marriage, or civil union.

(b) A professional guardian or conservator must be certified by the Center for Guardianship Certification unless waived by the court for good cause.

(c) If a professional guardian or conservator is an entity, including, but not limited to, limited liability organizations and partnerships, it must have a certified guardian or conservator involved in the provision of guardianship or conservatorship services for persons under guardianship or conservatorship.

(d) The court can for good cause require any guardian or conservator to be certified by the Center for Guardianship Certification.

Nev. Rev. Stat. § 159.0595 Private professional guardians. 1. A private professional guardian, if a person, must be qualified to serve as a guardian pursuant to NRS 159.059 and must be a registered guardian or master guardian unless a hearing is held and the court finds that good cause exists to waive the requirement that the private professional guardian be a registered guardian or master guardian. 2. A private professional guardian, if an entity, must be qualified to serve as a guardian pursuant to NRS 159.059 and must have a registered guardian or master guardian involved in the day-to-day operation or management of the entity unless a hearing is held and the court finds that good cause exists to waive the requirement that the private professional guardian have a registered

guardian or master guardian involved in the day-to-day operation or management of the entity. 3. As used in this section: (a) "Entity" includes, without limitation, a corporation, whether or not for profit, a limitedliability company and a partnership. (b) "Master guardian" means a person who is certified by the National Guardianship Foundation or any successor organization as a master guardian. (c) "Person" means a natural person. (d) "Registered guardian" means a person who is certified by the National Guardianship Foundation or any successor organization as a registered guardian.