

## Guardianship of Minors



**Kids Matter Inc.**

Susan Conwell and Susan Fisher

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1

## Statistics

In Milwaukee County:

- Number of grandparents living with grandchildren under 18: 17,176
- Number of those grandparents responsible for grandchildren: 7,793 or 45%
- Years the grandparents have raised their grandchildren:
  - Less than one year: 1,457 (19%)
  - 1-2 years: 2,000 (26%)
  - 3-4 years: 1,258 (16%)
  - 5 or more years: 3,077 (39%)

U.S. Census Bureau, 2005-2009 American Community Survey 5-Year Estimates,  
<http://factfinder.census.gov/servlet/ADPTable>.

2

## Overview

- Scope of Presentation
- Legal Considerations
- Procedure

3

## Scope of Presentation

- Focus: Non-parent caregivers seeking guardianship of a child
- Coverage:
  - (Brief) Background on child abuse
  - (Brief) Wis. Stat. §. 48.977 (CHIPS Petitions)
  - Private petitions for guardianship of a minor under Wis. Chapter 54
  - Not termination of parental rights (TPR), adoption, or grandparent visitation
  - Not about guardianship of the estate

4



## Child Abuse

- Types:
  - Physical
  - Sexual
  - Emotional
  - Neglect



5



## Physical Abuse

- **What is physical abuse of a child?**  
Physical abuse is an injury deliberately inflicted upon a child by any person, including adults. Physical abuse includes fractured or broken bones, burns, severe and/or frequent bruises, and any other major physical harm.



6

## Physical Abuse (cont'd)

- **How do you recognize physical abuse?**  
Physical abuse is usually identified by physical marks on the child's body, but children can also suffer emotional damage from abuse. The list below describes physical signs you may notice as well as emotional signs.
- **Physical Signs**
  - Bruises, welts on face, neck, chest, and back.
  - Injuries in the shape of object (e.g., belt or cord).
  - Unexplained burns on palms, soles of feet, and back.
  - Fractures that do not fit the story of how an injury occurred.
  - Delay in seeking medical help.
- **Emotional signs**
  - Extremes in behavior: very aggressive or withdrawn and shy.
  - Afraid to go home.
  - Frightened of parents.
  - Fearful of other adults.

7

## Child Sexual Abuse

- **What is sexual abuse?**  
Sexual abuse is any contact between a child and adult for the adult's sexual stimulation. This includes inappropriate touching, showing pornography, sex and exposure of body parts to the child. Sometimes a child will be physically hurt during the act, but even if there are no marks, a child can be traumatized by sexual abuse.
- **How do you recognize sexual abuse?**  
Unlike physical abuse, the physical signs of sexual abuse are not obvious and with some children there are no signs at all. Often emotional or behavioral signs are more commonly seen. If there are signs, below is a list of some of the signs you may find.

8

## Child Sexual Abuse (cont'd)

### Physical Signs

- Pain, swelling or itching in genital area
- Bruises, bleeding, discharge in genital area
- Difficulty walking or sitting, frequent urination, pain
- Stained or bloody underclothing
- Venereal diseases
- Refusal to take part in gym or other exercises

### Emotional Signs

- Poor peer relationships
- Unusual interest in sex for age
- Drastic change in school achievement
- Runaway or delinquent
- Regressive or childlike behavior
- Fear, anxiety, depression and/or anger
- Younger children who have been sexually abused may have poor self-esteem and difficulty with close relationships.
- Older children and teenagers may act out their hurt by using drugs and alcohol or having sex.

9

## Child Neglect

### • What is child neglect?

Neglect is the most common form of child maltreatment. Neglect is when a parent, guardian, or other caregiver does not provide for a child's basic needs. Neglect includes not providing food, shelter, supervision, health care, schooling, affection or support.

10

## Child Neglect (cont'd)

### How do you recognize child neglect?

Child neglect can be characterized by both physical and emotional characteristics as listed below:

### Physical Signs

- Poor hygiene and/or odor
- Inappropriately dressed for weather
- Unmet medical or dental care needs
- Young children left alone and unsupervised for long periods of time
- Failure to thrive, malnutrition
- Constant hunger may beg or steal food
- Acts as a parent to his/her siblings
- Arrives early and stays late at school, play areas, or other people's homes

### Emotional Signs

- Extreme willingness to please
- Oldest child has a parental relationship with his/her siblings
- Is always watchful, as though waiting for something bad to happen
- Has learning problems (or problems concentrating) that cannot be attributed to specific psychological or physical causes

11

## CHILD ABUSE

- Any concerned individual can report suspected abuse or neglect directly to a local child protective service agency or law enforcement agency.
- Certain individuals whose employment brings them into contact with children are required by law to report any suspected abuse or neglect or threatened abuse or neglect to a child seen in the course of their professional duties.

12

## BUREAU OF MILWAUKEE CHILD WELFARE

- **To Report Child Abuse/Neglect:** 414-220-SAFE (7233)
- **Administrative Office and Access**  
1555 N. River Center Drive, Suite 220  
Milwaukee, WI 53212  
Phone (414) 220-7000  
Fax (414) 220-7062 (administrative)  
Director: Arlene Happach

13

## What to Report:

- Explain, as well as you can, what happened or is happening to the child. Describe the nature of the abuse or neglect. Be as specific as possible.
- It is helpful to have as much of the following information as you can when you call:
  - Name of birth parents or guardian
  - Date of birth for parents and children
  - Address of parents and children
  - School in which the children attend
  - Articulate the safety issue (What is the parent or guardian doing or not doing that is causing the child to be hurt or harmed in some way)
  - When the safety issue occurred and how often
  - Name, date of birth, and location if possible, of the person who causing the hurt or harm.

14

## Definitions of Guardianship

- Guardianship definitions vary by statutory chapter
- Primary chapters: Wis. Chapters 48 and 54

15

## Guardianship under Wis. Stat. § 54.01

- "Guardian" means a person appointed by a court to manage the income and assets and provide for the essential requirements for health and safety and the personal needs of a minor, an individual found incompetent, or a spendthrift. See Wis. Stat. § 54.01(10)
- "Guardian of the person." See Wis. Stat. § 54.01(12) and § 54.25 for full list of rights.

16

## Guardianship, See Wis. Stat. § 48.023

- Except as limited by an order of the court under [s. 48.977\(5\)\(b\)](#) or [48.978\(6\)\(b\) 2.](#), a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:
  - (1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.
  - (2) The authority to represent the child in legal actions and make decisions of substantial legal significance concerning the child
  - (3) The right and duty of reasonable visitation of the child.
  - (4) The rights and responsibilities of legal custody

17

## Jurisdiction:

- Children's Court has exclusive jurisdiction over minor guardianships. See Wis. Stat. § 48.14(2)(b).

18

## Legal Considerations

### Informal v. Formal Family Arrangements Pursuant to a Court Order

Informal arrangements allow families to make private, personal decisions without involving outside agencies or going to court.

Family arranged plans, if safe, appropriate, and agreeable, are often less tenuous.

Generally, there is no legal protection for non-parental caregivers or for children when no formal (i.e., order) exists.

19

## Legal Considerations

### Informal v. Formal Family Arrangements (Cont'd)

- Informal arrangements may jeopardize the ability of the family to obtain financial help and other services available under more formal arrangements (i.e., W-2 cash payment).
- Informal arrangements do not authorize the non-parental caregiver to make routine decisions for the child and may keep a child from receiving certain protections (i.e., medical care).
- Permanence. What is the best way to achieve permanence for and the safety of the child?

20

## Establishing a Legal Relationship

- Basic Considerations:
  - Only parents have the constitutional right to the care and custody of their children.
  - Parents have the legal responsibility to provide care and support to their minor children.
  - The law does not consider grandparents (or other non-parent caregivers) as having "rights" in the sense that parents have rights.

21

## How a Non-Parent May Obtain a Legal Relationship

### Establishing a Legal Relationship (Cont'd)

- The only way a non-parent may legally have the care, custody and control of a minor child is by a court order.
  - Ways to obtain court order:
    - Wisconsin Chapter 48: The child welfare system becomes involved and the court takes custody, control and supervision of the child.
    - Wisconsin Chapter 54: A relative or interested party petitions the court for guardianship.

22

## Relative Caregiver under CHIPS: Establishing a Legal Relationship (Cont'd)

- Minimally Sufficient: Standard for level of care parents must provide
- Parents don't have to sign their children up for ballet lessons, help them with their homework, or read to them. *They only need to meet the minimally sufficient level of care.*

23

## Establishing a Legal Relationship for Relative Caregiver under CHIPS (Cont'd)

- If a parent fails to provide a minimally sufficient level of care, a child may be determined to be in need of protection by the court. If so, the child will be subject to a court order commonly referred to as a Child in Need of Protection (CHIPS) order.
- In the Wisconsin Children's Code, the court is given jurisdiction over children under age 18 who are found to be in need of a CHIPS order

24

## Who Files:

Establishing a Legal Relationship for Relative Caregiver under CHIPS (Cont'd)

- In Milwaukee County, the District Attorney's Office is responsible for filing the majority of CHIPS petitions.
- This occurs when the Bureau of Milwaukee Child Welfare (BMCW) has conducted an investigation and, based on the outcome, refers the case alleging a need for protection or services

25

## Establishing a Legal Relationship for Relative Caregiver under CHIPS (Cont'd)

- If the decision has been made to officially remove the child from the care and custody of his or her parent or parents, BMCW will look to relatives for placement.
- Relative: "Relative" means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step uncle, step aunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "relative" includes an extended family member, as defined in s. 48.028 (2) (am), whether by blood, marriage, or adoption, including adoption under tribal law or custom. Wis. Stat. § 48.02(15).

26

## Guardianship under Wisconsin Ch. 48:

- BMCW may file a Ch. 48 guardianship if it finds the following:
  - Child must be found to be in need of protection or services.
  - The child will remain outside of the parent's home and the person nominated is willing to care for the child until age 18.
  - It is not in child's best interest to terminate parental rights.
  - Placement may become a kinship guardianship or a subsidized guardianship.

27

## Private Guardianship: Guardianship under Ch. 54

- May be appropriate where BMCW does not or cannot step in
- Also, in cases like the following:
  - Absent or deceased parents
  - AODA issues
  - Mental health issues
  - Other health related concerns
  - Severe disability impeding on one's ability to care for child
  - Incarcerated parents

28

## Private Guardianship (Cont'd)

- By law, parents are the preferred guardian.
- Parents may consent to a private guardianship.

29

## Private Guardianship (Cont'd)

- If the guardianship is contested, both parents must be found unfit by the court to continue.
- Only when there is a finding of unfitness may the court then review what is in the child's best interest.
- Evidentiary Standard: By clear and convincing evidence, See Wis. Stat. § 54.44(2).

30

## Private Guardianship (Cont'd)

- Unfitness standard not provided by statute but by case law
- *Barstad v. Frazier*
  - ...A parent is entitled to custody of his or her children unless the parent is either unfit or unable to care for the children or there are compelling reasons for awarding custody to a third party. Compelling reasons include abandonment, persistent neglect of parental responsibilities, extended disruption of parental custody, or other similar extraordinary circumstances that would drastically affect the welfare of the child. If the court finds such compelling reasons, it may award custody to a third party if the best interests of the children would be promoted. *Barstad v. Frazier*, 118 Wis. 2d 549, 569, 348 N.W.2d 479.
- The *Barstad* standard is to be used in minor guardianship proceedings. *Cynthia H. v. Joshua O. and Kristine O.*, 2009 WI App 176, ¶ 37.

31

## To Reverse Guardianship: Private Guardianship (Cont'd)

- If parent seeks to reverse guardianship, then the guardian bears the burden of proof to prove or reprove the *Barstad* standard to maintain the guardianship. See *Howard M. v. Jenae R.*, 196 Wis. 2d 16, 539 N.W.2d 104.
- The standard used to reverse guardianships neither ensures permanence for the child nor considers the child's best interest unless unfitness has been proven first.

32



## Other considerations: Private Guardianship

- Nature of Chapter 54
  - Drafted by practitioners in the adult guardianship arena so limitations in application to minors:
    - Lacks standards relating to parental custody
  - GAL duties more suitable for adult guardianships
    - For example, the GAL has the duty explain the guardianship pleadings to the proposed ward. In minor guardianships, the proposed ward may be a young child.
  - Not fully equipped to deal with emergency situations

33



## Other considerations: Private Guardianship (Cont'd)

- Is there sufficient evidence to meet the *Barstad* standard- unfitness v. minimally sufficient level of care?
- Does the child or family require services or supervision (under a CHIPS order)?
- Will guardianship truly provide permanence for the child?
  - Before you file, consider the age and health of the child and the guardian.

34



## Procedure: How to Obtain Private Guardianship for a Minor

- Disclaimer: Dependent on the child, his or her family, and other case-related matters, you will want to review the statute for any fact-specific concerns.

35



## Procedure:

- Petitioner is most often a relative, official, or other interested person.
- Wis. Stat. § 54.01(17): definition of interested person
- Wis. Stat. § 54.34: for who may file

36

## Procedure (Cont'd)

- Preference and nominations of guardians, Wis. Stat. § 54.15.
  - Parents are the preferred guardians.
  - If parents are unfit or deceased, selection of guardian will be based on a best interest standard.
  - Court will consider opinion of family
  - The proposed ward, if 14 or over, may nominate his or her own guardian.
  - Testamentary declaration (i.e., by will)
- Relative caregivers

37

## Procedure (Cont'd)

- Jurisdiction and Venue, Wis. Stat. § 54.30 and Wis. Stat. § 54.38.
  - File petition in county of residence of person subject to guardianship or where she or he is physically present, See Wis. Stat. § 54.30.

38

## Jurisdiction and Venue: Procedure (Cont'd)

- Proper notice must be given.
  - Failure to give proper notice deprives court of jurisdiction unless waived by interested person or the court. See Wis. Stat. § 54.38.
  - Notice must be in writing with a copy of the petition attached.

39

## Jurisdiction and Venue: Procedure (Cont'd)

- Notice must be served on:
  - The child's parents unless their parental rights have been terminated.
  - The proposed ward if he or she is 14 years or older.
  - Any person who has legal or physical custody of the child.
  - If the proposed ward is receiving long-term support services or similar public benefits, the county department of human services or social services that is providing the services or benefits.
  - Interested persons

40



## Jurisdiction and Venue: Procedure (Cont'd)

- Notice must be given at least 10 days before the time set for hearing
- Unless otherwise allowed by statute, notice on the parent, child, or custodian may be given by personal service, certified mail with return receipt requested, or facsimile transmission

41



## Continuation of Case

- The proposed guardian must submit additional paperwork, such as the sworn statement of acts, at specific times.
- A Guardian ad Litem will be appointed on the child's behalf.
- A hearing will be held. Whether the initial hearing is an uncontested or contested guardianship depends on the facts of the case.

42



## End of Guardianship

- Removal of Guardian
  - When a minor is 14, a guardian may be removed on petition of a minor. The standard is the best interest of a child. See Wis. Stat. § 54.15.
  - Guardian may be removed for failure or neglect. See Wis. Stat. § 54.68.

43



## Termination of Guardian, Wis. Stat. § 54.64.

- Minor becomes 18
- The ward moves to another state and a guardian is appointed in the new state.
- Minor marries
- Minor dies

44

## Other Types of Guardianships

- **Temporary Guardianship**, see Wis. Stat. § 54.50.
  - When immediate appointment is necessary
    - If the child has no parent or has no parent present and is in need of emergency medical care, BMCW may take custody of the child.
  - For a period of not more than 60 days with one 60 day extension
  - Must wait 90 days before another appointment
  - Power and duties similar to full guardianship, but may be limited by court order of appointment

45

## Other Types of Guardianship

- **Stand-by Guardianship**, see Wis. Stat. § 54.52.
  - May seek stand-by guardian for a minor to assume duties of guardianship on death, incapacity or resignation of prior guardian
  - A hearing is required – power and duties same as initially appointed guardians

46

## Kids Matter Inc. Rebuilding Childhoods. Fostering Futures

- Since 2001, Kids Matter Inc. has helped children in foster and kinship care thrive. Our current programs include:
  - **Kids Matter CASA** (Court Appointed Special Advocates) Our volunteers advocate for children who have been abused or neglected and help assure each child a safe, permanent, nurturing home.

47

## Kids Matter Inc. Rebuilding Childhoods. Fostering Futures

**Fostering Healing** – Our fostering healing experts – social workers, legal advocates and community resource specialists – connect with foster and kinship care families to provide:

- In-home caregiver support and education.
- Crisis counseling and trauma referral assistance.
- Emergency support with school related issues.
- Assistance with obtaining guardianship and securing victim compensation benefits.
- Help navigating the child welfare system, criminal justice system and juvenile court system.

**Family Connections** – A program in partnership with Brighter Futures Milwaukee that works with caregivers to develop solutions regarding:

- Access to benefits
- School challenges
- Behavioral problems
- Housing
- Childcare
- Healthcare for the family
- Legal problems with guardianship or benefits

48

## Resources

- Kids Matter website (<http://kidsmatterinc.org>)
- **National Resources**
- [AARP Grandparent Information Center](#) (888) 687-2277 (toll free)
- [The Brookdale Foundation](#) (212) 308-7355
- [Child Welfare Information Gateway](#) (800) 394-3366 (toll free)
- [Child Welfare League of America](#) (703) 412-2400
- [Children's Defense Fund](#) (202) 628-8787
- [Generations United](#) (202) 289-3979
- [Grand Families of America](#) (866) 203-8921 (toll free)
- [GrandsPlace](#) (860) 763-5789
- [National Aging Information Center](#) (202) 619-0724
- [National Committee of Grandparents For Children's Rights](#) (866) 624-9900 (toll free)
- [National Eldercare Locator](#) (800) 677-1116 (toll free)

49

**THE END**