

CHAPTER 27-20.1 GUARDIANSHIP OF A CHILD

27-20.1-01. Definitions.

The definitions set forth in section 27-20-02 are applicable to this chapter.

27-20.1-02. Jurisdiction.

The juvenile court has exclusive original jurisdiction of proceedings to grant, modify, or terminate guardianship for a child, except the testamentary appointment of a guardian for a minor governed by chapter 30.1-27.

27-20.1-03. Transfer from district court.

If a court does not approve acceptance of a testamentary guardian of a minor under chapter 30.1-27, the court shall immediately transfer the guardianship portion of the case to the juvenile court and order the child be taken to the juvenile court immediately or to a place of shelter care designated by the juvenile court, or release the child to the custody of the child's custodian, relative, or other responsible adult able and willing to assume custody of the child, to be brought to the juvenile court at a time designated by the court. The juvenile court shall immediately reappoint the guardian ad litem who served in the probate case whenever possible, or shall immediately appoint an alternative guardian ad litem.

27-20.1-04. Venue.

Except as otherwise provided by this section, a proceeding under this chapter must be commenced in the county in which the child resides. If deprivation is alleged, the proceeding may be brought in the county in which the child is present when it is commenced, the county in which the child has resided for the majority of the thirty days prior to the date of the alleged deprivation, or the county where the alleged deprivation has occurred. The court shall determine the appropriate venue for a deprivation action based on the best interest of the child.

27-20.1-05. Petition - Who may file.

A petition to establish, modify, or terminate a guardianship order, other than one that has been transferred by the district court under chapter 30.1-27, may be filed by any person interested in the welfare of the child who has knowledge of the facts alleged or has information and belief that the facts are true.

27-20.1-06. Contents of petition to appoint guardian of a child.

1. The petition must state that an order to appoint a guardian of a child is requested and the effect will be as stated in section 27-20.1-13.
2. The petition must also contain information required by rule 3 of the North Dakota Rules of Juvenile Procedure and include:
 - a. The name, address, and telephone number of the petitioner and the petitioner's relationship to the child;
 - b. The full legal name and date of birth of the child, accompanied by a certified copy of the child's birth certificate unless the petitioner shows good cause for why the child's birth certificate is unavailable;
 - c. The name, last known address, and telephone number of the mother and the name, last known address, and telephone number of the father, alleged father, or presumed father;
 - d. If the name, last known address, or telephone number of the parents is not included, detailed information concerning the efforts made to locate the parents;
 - e. The name, last known address, and telephone number of the persons having parental rights or visitation rights and the name, address, and telephone number of the persons or entity having the care, custody, or control of the child;
 - f. The names, current addresses, and telephone numbers of the persons with whom the child currently lives;

- g. The names, addresses, and telephone numbers of the persons with whom the child has lived during the last five years;
- h. The names of any siblings or half-siblings of the child and with whom each sibling and half-sibling currently lives;
- i. The name and address of the proposed guardian, if different from the petitioner;
- j. The occupation and qualifications of the proposed guardian;
- k. The names, addresses, and telephone numbers of the spouse, parents, adult children, any adult siblings of the proposed guardian, and any adult who resides with or may reside with the proposed guardian;
- l. A brief description and the approximate value of the real and personal property and income of the child, so far as they are known to the petitioner;
- m. A brief description and the approximate value of any anticipated income of the child;
- n. A statement regarding each parent that:
 - (1) The parent is deceased, accompanied by a copy of the death certificate;
 - (2) The parent consents to the guardianship, accompanied by an affidavit of the parent indicating consent and any limitations on the guardian's duties under section 27-20.1-15;
 - (3) The parent's rights have been previously terminated, accompanied by a certified copy of the court order terminating parental rights; or
 - (4) The parent has deprived the child as that term is defined under section 27-20-02;
- o. A statement whether the petitioner:
 - (1) Has participated, as a party, a witness, or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any; and
 - (2) Knows of any proceeding that could affect the current proceeding, including proceedings for child support enforcement and proceedings relating to domestic violence protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;
- p. A statement setting forth the reasons why the petition is in the child's best interests; and
- q. A statement of whether the child is an Indian child as defined under Public Law 95-608 [92 Stat. 3069; 25 U.S.C.1903]. If the child is an Indian child, the petition must comply with the requirements of Public Law 95-608 [92 Stat. 3071; 25 U.S.C. 1911 et seq.].

27-20.1-07. Procedure upon filing of petition.

1. A supporting affidavit establishing the basis for the guardianship under subdivision n of subsection 2 of section 27-20.1-06, and that the guardianship is in the best interest of the child, must be filed with the petition. Where deprivation is alleged under paragraph 4 of subdivision n of subsection 2 of section 27-20.1-06, the petition must contain sufficient statements to establish deprivation unless the child has resided in the home of the proposed guardian for at least one year before the filing date of the petition.
2. A petition under this chapter must be reviewed by the court to determine whether the contents of the petition comply with section 27-20.1-06.
3. If a petition alleges deprivation, the petition will be reviewed by the court to determine whether there has been a sufficient showing of deprivation.
4. If the petitioner has made an insufficient showing of deprivation, the court, without oral argument or an evidentiary hearing shall issue an order denying the petition. If the petitioner has made a sufficient showing of deprivation justifying a guardianship, the court shall set a date for an evidentiary hearing.

27-20.1-08. Procedure upon approval of petition.

1. The court shall issue a summons in accordance with rule 5 of the North Dakota Rules of Juvenile Procedure and appoint a lay guardian ad litem upon the approval of the petition.
2. An initial hearing must be set in accordance with rule 2 of the North Dakota Rules of Juvenile Procedure.
3. For a petition filed under paragraphs 1, 2, or 3 of subdivision n of subsection 2 of section 27-20.1-06:
 - a. The petitioner may request the court waive the hearing requirement.
 - b. The petition must state any person interested in the welfare of the child who opposes the appointment of the proposed guardian shall file an objection to the appointment and a demand for hearing within ten days of the service of the petition. If an objection is not filed within ten days, the court may order the appointment of a guardian for the child without a hearing upon review of the guardian ad litem's report.
 - c. If the petition is unopposed, the court may order appointment of a guardian on the strength of the pleadings, including the report of the guardian ad litem, if satisfied that the conditions of paragraphs 1, 2, or 3 of subdivision n of subsection 2 of section 27-20.1-06 have been met, or may conduct a hearing and require proof of the matters necessary to support the order sought. Before appointment of the guardian, the court shall consider whether the child has or will have significant excess assets and determine whether a conservatorship is necessary under chapter 30.1-29.
 - d. The guardian ad litem shall file a report in accordance with rule 17 of the North Dakota Rules of Juvenile Procedure, within twenty days after appointment.

27-20.1-09. Right to counsel.

1. If, at any time in the proceeding, the court determines the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child.
2. At a proceeding commenced under this chapter, a parent who is indigent and unable to employ legal counsel is entitled to counsel at public expense. If a parent appears without counsel the court shall ascertain whether the parent knows the parent may be represented by counsel and that the parent is entitled to counsel at public expense if indigent. The court may continue the proceeding to enable the parent to obtain counsel and, subject to this section, counsel must be provided for an unrepresented indigent parent upon the parent's request and the court's determination that the parent is indigent.
3. An indigent parent is one who meets the definition of indigent under the guidelines adopted by the commission on legal counsel for indigents.

27-20.1-10. Conduct of hearings.

1. A hearing under this chapter must be conducted by the court without a jury, in an informal but orderly manner, and separately from other proceedings not included in section 27-20-03 or section 27-20.1-02.
2. The proceedings must be recorded by stenographic notes or by electronic, mechanical, or other appropriate means.
3. The petitioner shall present the evidence in support of any allegations of the petition not admitted.
4. The general public must be excluded from the hearing and only the parties, their counsel, witnesses, victims, and any other persons the court finds to have an interest in the proceedings may be admitted. The court may temporarily exclude the child or other person from the hearing if, after being warned by the court that disruptive conduct will cause removal from the courtroom, the child or other person persists in conduct justifying removal from the courtroom.

5. If the child has or will have significant excess assets, the court shall determine whether a conservatorship is necessary under chapter 30.1-29.

27-20.1-11. Appointment of guardian of a child.

1. The court may appoint a guardian of a child if the court finds by clear and convincing evidence that the appointment is in the child's best interest and:
 - a. Both parents are deceased or the surviving parent's rights have been terminated by a previous court order, but there has been no appointment of a guardian for the child by will, the court has transferred the case to juvenile court without appointment of a guardian, or the testamentary guardian failed to accept the appointment under chapter 30.1-27;
 - b. The parents have consented in writing by affidavit;
 - c. All parental rights have been previously terminated; or
 - d. The child is a deprived child as defined under section 27-20-02.
2. The court may appoint as guardian any fit and willing person whose appointment would be in the best interest of the child. If the court finds by clear and convincing evidence that the child is of sufficient maturity to make a sound judgment, or the child is age fourteen or older, the court may give substantial weight to the preference of the child. The court shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
3. The court may appoint a guardian as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent under chapter 27-20.

27-20.1-12. Findings on petition to appoint guardian of a child - Order of appointment.

1. After hearing the evidence on the petition or after a waiver of the hearing, the court shall make and file its findings as to whether the requirements of section 27-20.1-06 have been met, whether the guardian is a fit and willing person, and whether the appointment of the guardian is in the child's best interest.
2. Upon finding that the requirements of section 27-20.1-06 have been met, the guardian is a fit and willing person, and the appointment of the guardian is in the child's best interest, the court shall order the appointment. The order must contain:
 - a. The name, address, and telephone number of the guardian.
 - b. Notice of the right to appeal the guardianship appointment and of the right to seek modification or termination of the guardianship at any time.
 - c. If appropriate and in the child's best interest, the court shall determine the nature and extent, if any, of any contact, sharing of information, and visitation between the parents and the child, and the child and any other interested person.
 - d. A requirement that the guardian provide, within ninety days from the date of the order, a beginning inventory of any assets owned by the child or in which the child has an interest. The guardian shall file with the court and serve a copy of the beginning inventory on the child if the child is fourteen years of age or older, and any interested persons designated by the court in its order.
 - e. The date on which the first annual report is due and the requirement to file annually thereafter.
 - f. The length of time the order is effective. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a showing of good cause, sets a different time frame. An order may not be effective for more than three years.

27-20.1-13. Effect of order appointing a guardian.

1. An order appointing a guardian of a child suspends any authority of a parent that is granted to the guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.

2. While a guardianship is in effect, the parent has the following rights:
 - a. Parenting time, contact, and information, to the extent delineated in the guardianship order issued by the court. A parent may petition the court for specific enforcement provisions of the order relating to contact, parenting time, or information; and
 - b. Inheritance from the child.
3. The parent has the primary responsibility to financially support the child.

27-20.1-14. Acceptance of appointment - Consent to jurisdiction - Letters of guardianship.

1. By accepting the appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.
2. By accepting the appointment, a guardian acknowledges the duty to file an annual report under section 27-20.1-15.
3. Upon the guardian's acceptance of the appointment, the court shall issue letters of guardianship. The letters of guardianship must contain:
 - a. The name, address, and telephone number of the guardian;
 - b. The full name of the child;
 - c. Any limitations on the guardian's authority to make decisions on behalf of the child;
 - d. The expiration date of the appointment; and
 - e. The date by which the guardian must file the annual report required under section 27-20.1-15.

27-20.1-15. Powers and duties of guardian of a child.

1. A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child.
2. A guardian has the following powers and duties:
 - a. The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
 - b. The guardian may receive money payable for the support of the child to the child's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship.
 - (1) The guardian may receive money or property of the child paid or delivered by virtue of section 30.1-26-03. Any sums received must be applied to the child's current needs for support, care, and education.
 - (2) The guardian must exercise due care to conserve any excess sum for the child's future needs unless a conservator has been appointed for the estate of the child, in which case the excess sum must be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for the guardian's services except as approved by order of the court or as determined by a duly appointed conservator other than the guardian.
 - (3) The guardian may not use funds from the child's estate for room and board that the guardian or the guardian's spouse have furnished to the child unless a charge for the service is approved by order of the court made upon notice to at least one of the child's next of kin, if notice is possible.

- (4) A guardian may institute proceedings to compel the performance by any person of a duty to support the child or to pay sums for the welfare of the child.
- c. To facilitate the child's education, social, or other activities.
- d. To authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented.
- e. A guardian shall file an annual report with the court regarding the exercise of powers and duties under this subsection.
 - (1) The report must describe the status or condition of the child, including any change of residence and reasons for the change, any medical treatment received by or withheld from the child, the child's educational progress, any expenditure and income affecting the child, and any exercise of legal authority by the guardian affecting the child.
 - (2) The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate.
 - (3) The guardian shall report whether the child continues to require a guardianship.
 - (4) The report must be filed with the court.
 - (5) The filing of the report does not constitute an adjudication or a determination of the merits of the report nor does the filing of the report constitute the court's approval of the report.
 - (6) The court shall review the report and a hearing may be set.
 - (7) The office of the state court administrator shall provide forms that may be used to fulfill reporting requirements. Any report must be similar in substance to the state court administrator's form.
 - (8) Copies of the guardian's annual report and of any other reports required by the court must be mailed to the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, and any interested persons designated by the court in its order.
 - (9) If a guardian fails to file a complete annual report as required by this subdivision, fails to file a report at other times as the court may direct, or fails to provide an accounting of an estate, the court, upon its own motion or upon petition of any interested person, may issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account, or be found in contempt for failure to comply. A copy of the order to show cause must be provided to the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, any interested persons designated by the court in its order, and the juvenile court director.
- f. The guardian shall inform the court of any change in the child's residence within thirty days of the change, but must seek prior authorization of the court to establish or move the child's residence outside of the state.
- g. In determining what is in the child's best interest, the guardian shall take into account the child's preferences to the extent actually known or reasonably ascertainable by the guardian.
- h. To the extent reasonable, the guardian shall delegate to the child responsibilities for decisions affecting the child's well-being.
- i. The guardian may not delegate authority as a guardian under a power of attorney without prior approval from the court.

27-20.1-16. Procedure for modification, resignation, or termination of a guardianship.

1. A guardian may petition for permission to resign. A petition for permission to resign must include a request for appointment of a successor guardian unless continuation of

- the guardianship is no longer necessary. Resignation of a guardian does not terminate the guardianship unless specifically ordered by the court.
2. Any party to the proceeding in which the child's status was adjudicated, the director, the child, if fourteen or more years of age, or any interested person, may petition for removal or modification of a guardian on the grounds the removal or modification would be in the best interest of the child. A petition for removal or modification must include a request for appointment of a successor guardian unless continuation of the guardianship is no longer necessary.
 3. Any party to the proceeding in which the child's status was adjudicated, the director, the child, if fourteen or more years of age, or any interested person, may petition for termination of the guardianship due to:
 - a. The child's death, adoption, marriage, or attainment of majority;
 - b. The withdrawal of the parent's consent; or
 - c. The basis for the guardianship no longer exists.
 4. The person seeking modification, resignation, removal, or termination of the guardianship shall file a supporting affidavit with the petition demonstrating the basis for the petition, and serve the petition and affidavit on the child, if the child is age fourteen or older, the child's parents, unless the parents' rights have been terminated or the parents are deceased, and any interested persons designated by the court in its order. The petition must be reviewed by the court to determine whether to set an evidentiary hearing. If an insufficient showing has been made, the court shall issue an order denying the petition.
 5. If, at any time in the proceeding, the court determines it is in the best interest of the child, the court may appoint a guardian ad litem.
 6. If, at any time in the proceeding, the court determines the interests of the child are or may be inadequately represented, the court may appoint an attorney to represent the child.

27-20.1-17. Expiration and termination of guardianship of a child.

1. An order appointing or reappointing a guardian under this chapter is effective for up to one year unless the court, upon a finding of good cause, sets a different time frame. An order may not be effective for more than three years. At least sixty days before the expiration of the initial order of appointment or any following order of reappointment, the court shall request and consider information submitted by the guardian, the child, if fourteen years of age or older, the child's attorney, if any, the child's parents, and any interested persons regarding whether the need for a guardianship continues to exist. The court, at its discretion, may appoint a guardian ad litem in accordance with section 27-20.1-08, before the hearing. The court shall hold a hearing on whether the guardianship should continue. Following the hearing and consideration of submitted information, the court may:
 - a. Terminate the guardianship if shown by clear and convincing evidence that the circumstances that led to the guardianship no longer exist;
 - b. Reappoint the guardian for up to three years; or
 - c. Appoint a new guardian.
2. A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts or the guardian's obligation to account for funds and assets of the child. For cases arising under section 27-20-30.1, the age of majority is age twenty-one.
3. The supreme court, by rule or order, shall provide for the regular review of guardianships in existence on August 1, 2019.

27-20.1-18. Appointment of emergency guardian of a child.

1. Upon petition by a person interested in the child's welfare, the court may appoint an emergency guardian if the court finds that compliance with the procedures of this chapter will likely result in substantial harm to the child's health, safety, or welfare.

- Immediately upon receipt of the petition for an emergency guardian, the court shall appoint a guardian ad litem to advocate for the best interests of the child.
2. An emergency guardian may be appointed without hearing or notice to the child, the child's parent or legal custodian, or the child's guardian ad litem only if the court finds from affidavit or other sworn testimony that the child will be substantially harmed before a hearing can be held. If the court appoints an emergency guardian without hearing or notice to the child, the child's parent or legal custodian, or the child's guardian ad litem, the child, the child's parent or legal custodian, and the child's guardian ad litem must be given notice of the emergency appointment by the petitioner within forty-eight hours after the emergency appointment. The court shall hold a hearing on the appropriateness of the emergency appointment within ninety-six hours after the emergency appointment or filing of the petition.
 3. Reasonable notice, either oral or written, stating the time, place, and purpose of the hearing must be given to the child, if fourteen years of age or older, and, to the child's parents or legal custodian, if they can be found. If oral notice is provided, the petitioner must file an affidavit stating that oral notice including the time, place, and purpose of the hearing has been provided.
 4. The court shall determine if there is probable cause to believe the emergency appointment is in the best interest of the child and one of the provisions of subsection 1 of section 27-20.1-11 is met.
 5. If the emergency guardian is found to be appropriate, the court may order the emergency guardian remain in place for no more than sixty days from the date of the hearing. The court may extend the emergency order for up to six months.
 6. A request for an emergency guardian may be included in a petition for appointment of a guardian of a child under section 27-20.1-05.

27-20.1-19. Attorney's fees.

If the court determines an action brought under section 30.1-27-07 or this chapter is frivolous, the court may award reasonable, actual, and statutory costs, including reasonable attorney's fees, incurred by or on behalf of the child.

27-20.1-20. Protective order.

1. At any stage of the proceedings, upon application of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of an individual if the court finds the conduct:
 - a. Is or may be detrimental or harmful to the child; or
 - b. Will tend to defeat the execution of an order of disposition; and
2. Due notice of the application or motion and the grounds therefor and an opportunity to be heard have been given to the person against whom the order is directed.

27-20.1-21. Orders for evaluation.

1. The court may order a party or a proposed guardian to submit to a chemical dependency, parental capacity, mental health, domestic violence, anger management, or other relevant evaluation by a suitably licensed or certified examiner. The court may request other persons having regular contact with the child submit to a chemical dependency, parental capacity, mental health, domestic violence, anger management, or other relevant evaluation by a suitably licensed or certified examiner. Failure to submit to an evaluation will be taken into consideration by the court.
2. The order may be made only on motion for good cause by a party or guardian ad litem, or on the court's own motion, and on notice to all parties and the person to be evaluated. The order must:
 - a. Specify the type of evaluation and the type of professional or entity to perform the evaluation;
 - b. Include the deadline for performing the evaluation;
 - c. Include the date by which the evaluation must be filed with the court; and

- d. Specify the party that must pay the costs of the evaluation. If the party is unable to pay the costs, the court may direct the costs to be paid, in whole, or in part, by the county. The court may direct the party to reimburse the county, in whole or in part, for the payment.
3. The evaluation must be in writing and must set out in detail the evaluator's findings, including diagnoses, conclusions, and the results of any tests. The evaluator must file a copy with the court.
4. The evaluation reports and any addendums are confidential. The public or the parties may not read or copy the evaluation reports or addendums unless the court, in its discretion, gives permission. The guardian ad litem may read the evaluation reports and addendums but may not copy the evaluation reports and addendums unless the court, in its discretion, gives permission. A party, proposed guardian, or other person requested to submit to an evaluation by the court under this section is entitled to a copy of the report of evaluation and any addendum, upon request.

27-20.1-22. Confidentiality.

Except as provided by section 27-20-51, all files and records under this chapter are closed to the public and confidential.