

**Appendix V**

**Appointment of Guardianship: State Statutes<sup>1</sup>**

By Chloe Canetti and Rafaela Rodrigues

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This document summarizes the common themes in state definitions regarding appointment of a guardian. Some states define appointment of a guardian in more than one statute. The information contained in this document will also be helpful to state court judges issuing findings that immigrant children need as a prerequisite to filing for Special Immigrant Juvenile Status (SIJS). Any state law definition of guardianship can apply in any state court proceeding for purposes of the court applying state law to issue the required SIJS findings.

**States that specifically allow a minor over the age of fourteen to appoint his/her own guardian:** Arizona, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, West Virginia

**States with guardianship provisions specifically pertaining to SIJS: California**

States	Appointment of Guardian Statutes
Alabama	<p><b>Court appointment of guardian</b>– Ala. Code § 26-2A-76</p> <ul style="list-style-type: none"> <li>The court may appoint as guardian any person whose appointment would be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 or more years of age, unless the court finds the appointment contrary to the best interest of the minor.</li> </ul>
Alaska	<p><b>Court appointment of guardian</b>– Alaska Stat. Ann. §13.26.147(b)</p> <ul style="list-style-type: none"> <li>Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of AS 13.26.132 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.</li> </ul>
Arizona	<p><b>Court appointment of guardian</b>– Ariz. Rev. Stat. Ann. § 14-5206</p> <ul style="list-style-type: none"> <li>The court shall appoint as guardian a person whose appointment would be in the best interests of the minor. The court may appoint a person nominated by the minor, if the</li> </ul>

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<sup>2</sup> Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to [info@niwap.org](mailto:info@niwap.org).

<p><b>Arizona</b></p>	<p>minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.</p>
<p><b>Arkansas</b></p>	<p><b>Matters considered by court-</b> Ark. Code Ann. § 28-65-210</p> <ul style="list-style-type: none"> <li>• Before appointing a guardian, the court must be satisfied that: <ul style="list-style-type: none"> <li>○ The person for whom a guardian is prayed is either a minor or otherwise incapacitated;</li> <li>○ A guardianship is desirable to protect the interests of the incapacitated person; and</li> <li>○ The person to be appointed guardian is qualified and suitable to act as such.</li> </ul> </li> </ul>
<p><b>California</b></p>	<p><b>Appointment of guardian-</b> Cal. Prov. Code § 1514(b)(1)</p> <ul style="list-style-type: none"> <li>• In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.</li> </ul> <p><b>Health, Safety, and Welfare of Children-</b> Cal. Fam. Code § 3020</p> <ul style="list-style-type: none"> <li>• The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.</li> </ul> <p><b>Order of Preference-</b> Cal. Fam. Code § 3040</p> <ul style="list-style-type: none"> <li>• Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020: <ul style="list-style-type: none"> <li>○ To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.</li> <li>○ If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.</li> <li>○ To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.</li> </ul> </li> <li>• The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).</li> </ul> <p><b>Appointment of guardian for individual 18-21 years; SIJS-</b> Cal. Prob. Code § 1510.1(a)(1)</p> <ul style="list-style-type: none"> <li>• With the consent of the proposed ward, the court may appoint a guardian of the person for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding special immigrant juvenile status pursuant to subdivision (b) of Section 155 of the Code of Civil Procedure.</li> </ul>

<p><b>Colorado</b></p>	<p><b>Judicial appointment of guardian-</b> Colo. Rev. Stat. Ann. § 15-14-204</p> <ul style="list-style-type: none"> <li>• A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.</li> <li>• The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> <li>○ The parents consent;</li> <li>○ All parental rights have been terminated;</li> <li>○ The parents are unwilling or unable to exercise their parental rights; or</li> <li>○ Guardianship of a child has previously been granted to a third party and the third party has subsequently died or become incapacitated and the guardian has not made an appointment of a guardian either by will or written instrument; however, the court shall not presume it is in the best interests of a child to be in the care of a parent in circumstances where a court has previously granted custody of a child to a third party.</li> </ul> </li> </ul>
<p><b>Connecticut</b></p>	<p><b>Appointment of guardian for minor-</b> Conn. Gen. Stat. Ann. § 45a-616</p> <ul style="list-style-type: none"> <li>• If any minor has no parent or guardian of his or her person, the court of probate for the district in which the minor resides may, on its own motion, appoint a guardian or coguardians of the person of the minor, taking into consideration the standards provided in section 45a-617...</li> <li>• If any minor has a parent or guardian, who is the sole guardian of the person of the child, the court of probate for the district in which the minor resides may, on the application of the parent or guardian of such child or of the Commissioner of Children and Families with the consent of such parent or guardian and with regard to a child within the care of the commissioner, appoint one or more persons to serve as coguardians of the child. When appointing a guardian or guardians under this subsection, the court shall take into consideration the standards provided in section 45a-617...</li> </ul> <p><b>Appointment of guardian-</b> Conn. Gen. Stat. Ann. § 45a-617</p> <ul style="list-style-type: none"> <li>• When appointing a guardian, coguardians or permanent guardian of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian, coguardians or permanent guardian to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian, coguardians or permanent guardian; and (4) the best interests of the child. There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a guardian, coguardian or permanent guardian is in the best interests of the minor child</li> </ul>
<p><b>Delaware</b></p>	<p><b>Grounds for guardianship of child-</b> Del. Code Ann. tit. 13, § 2330</p> <ul style="list-style-type: none"> <li>• Prior to granting an order for guardianship under this chapter, the Court shall find for each parent the following: <ul style="list-style-type: none"> <li>○ The parent voluntarily consents to the guardianship; notwithstanding the consent, if the child is in DSCYF custody, the Court shall also determine whether guardianship is the appropriate permanency plan for the child and whether it is in the best interest of the child for the guardianship to be granted;</li> <li>or</li> </ul> </li> </ul>

<p><b>Delaware</b></p>	<ul style="list-style-type: none"> <li>○ After a hearing on the merits, by a preponderance of the evidence that petitioner has established: <ul style="list-style-type: none"> <li>▪ The child is dependent, neglected or abused and the reasons therefor; and</li> <li>▪ It is in the best interests of the child for the guardianship to be granted.</li> </ul> </li> </ul>
<p><b>District of Columbia</b></p>	<p><b>Appointment of guardians-</b> D.C. Code § 21-103</p> <ul style="list-style-type: none"> <li>• When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant.</li> <li>• Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family.</li> </ul> <p><b>Selection of guardian by infant-</b> D.C. Code § 21-108</p> <ul style="list-style-type: none"> <li>• When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian.</li> <li>• When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made...</li> </ul>
<p><b>Florida</b></p>	<p><b>Guardians of minors-</b> Fla. Stat. Ann. § 744.3021</p> <ul style="list-style-type: none"> <li>• Except as provided in subsection (4), upon petition of a parent, brother, sister, next of kin, or other person interested in the welfare of a minor, a guardian for a minor may be appointed by the court without the necessity of adjudication pursuant to s. 744.331.<sup>3</sup> A guardian appointed for a minor, whether of the person or property, has the authority of a plenary guardian.</li> </ul> <p><b>Considerations in appointment of guardian-</b> Fla. Stat. Ann. § 744.312</p> <ul style="list-style-type: none"> <li>• If the person designated is qualified to serve pursuant to s. 744.309<sup>4</sup>, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.</li> <li>• If a guardian cannot be appointed under subsection (1), the court may appoint any person who is fit and proper and qualified to act as guardian, whether related to the ward or not. The court shall give preference to the appointment of a person who: <ul style="list-style-type: none"> <li>○ Is related by blood or marriage to the ward;</li> <li>○ Has educational, professional, or business experience relevant to the nature of the services sought to be provided;</li> <li>○ Has the capacity to manage the financial resources involved; or</li> <li>○ Has the ability to meet the requirements of the law and the unique needs of the individual case.</li> </ul> </li> <li>• The court shall also: <ul style="list-style-type: none"> <li>○ Consider the wishes expressed by an incapacitated person as to who shall be appointed guardian.</li> <li>○ Consider the preference of a minor who is age 14 or over as to who should be appointed guardian.</li> <li>○ Consider any person designated as guardian in any will in which the ward is a beneficiary.</li> </ul> </li> </ul>

<sup>3</sup> This statute pertains to procedures to determine incapacity

<sup>4</sup> This statute pertains to who may be appointed guardian of a resident ward

	<ul style="list-style-type: none"> <li>○ Consider the wishes of the ward's next of kin, when the ward cannot express a preference.</li> </ul>
<b>Georgia</b>	<p><b>Qualifications of guardians-</b> Ga. Code Ann. §29-2-2</p> <ul style="list-style-type: none"> <li>• Only an individual may serve as guardian of a minor.</li> <li>• No individual may be appointed as guardian of a minor who: <ul style="list-style-type: none"> <li>○ Is a minor, a ward, or a protected person; or</li> <li>○ Has a conflict of interest with the minor unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the minor's best interest.</li> </ul> </li> </ul>
<b>Hawaii</b>	<p><b>Judicial appointment of guardian-</b> Haw. Rev. Stat. §560:5-204</p> <ul style="list-style-type: none"> <li>• A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.</li> <li>• The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> <li>○ The parents consent;</li> <li>○ All parental rights have been terminated; or</li> <li>○ The parents are unwilling or unable to exercise their parental rights...</li> </ul> </li> </ul> <p><b>Judicial appointment of guardian; priority of minor's nominee-</b> Haw. Rev. Stat. § 560:5-206(a)</p> <ul style="list-style-type: none"> <li>• The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained fourteen years of age, unless the court finds the appointment will be contrary to the best interest of the minor.</li> </ul>
<b>Idaho</b>	<p><b>Court appointment of guardian of minor; conditions for appointment-</b> Idaho Code Ann. § 15-5-204</p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated by prior court order or upon a finding that the child has been neglected, abused, abandoned, or whose parents are unable to provide a stable home environment... In all cases, the court shall consider the best interests of the child as the primary factor in the determination whether to appoint, and whom to appoint, as a guardian for such child. In determining the choice of a guardian for an unmarried minor, the advanced age or disability of a potential guardian shall not, in and of itself, be used as a criterion of the suitability of the potential guardian so long as the potential guardian is otherwise suitable.</li> </ul> <p><b>Court appointment of guardian of minor; priority of minor's nominee-</b> Idaho Code Ann. § 15-5-206</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen (14) years of age or older, unless the court finds the appointment contrary to the best interests of the minor.</li> </ul> <p><b>Court appointment of guardian of minor-</b> Idaho Code Ann. § 15-5-207</p> <ul style="list-style-type: none"> <li>• Proceedings for the appointment of a guardian or co-guardians may be initiated by the following persons: <ul style="list-style-type: none"> <li>○ Any relative of the minor;</li> <li>○ The minor if he is fourteen (14) or more years of age;</li> </ul> </li> </ul>

<p><b>Idaho</b></p>	<ul style="list-style-type: none"> <li>○ Any person who comes within section 15-5-213(1), Idaho Code; or</li> <li>○ Any person interested in the welfare of the minor...</li> <li>● As an alternative to appointing one (1) guardian for a minor, the court may appoint no more than two (2) persons as co-guardians for a minor if the court finds: <ul style="list-style-type: none"> <li>○ The appointment of co-guardians will best serve the interests of the minor; and</li> <li>○ The persons to be appointed as co-guardians will work together cooperatively to serve the best interests of the minor.</li> </ul> </li> <li>● If the court appoints co-guardians, the court shall also determine whether the guardians: <ul style="list-style-type: none"> <li>○ May act independently;</li> <li>○ May act independently but must act jointly in specified matters; or</li> <li>○ Must act jointly.</li> </ul> </li> <li>● This determination by the court must be stated in the order of appointment and in the letters of guardianship.</li> <li>● If the court finds, upon hearing, that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor...</li> </ul>
<p><b>Illinois</b></p>	<p><b>Who may act as guardian-</b> 755 Ill. Comp. Stat. 5/11-3</p> <ul style="list-style-type: none"> <li>● A person is qualified to act as guardian of the person and as guardian of the estate if the court finds that the proposed guardian is capable of providing an active and suitable program of guardianship for the minor and that the proposed guardian: <ul style="list-style-type: none"> <li>○ has attained the age of 18 years;</li> <li>○ is a resident of the United States;</li> <li>○ is not of unsound mind;</li> <li>○ is not an adjudged person with a disability as defined in this Act; and</li> <li>○ has not been convicted of a felony, unless the court finds appointment of the person convicted of a felony to be in the minor's best interests, and as part of the best interest determination, the court has considered the nature of the offense, the date of offense, and the evidence of the proposed guardian's rehabilitation. No person shall be appointed who has been convicted of a felony involving harm or threat to a child, including a felony sexual offense.</li> </ul> </li> </ul> <p><b>Appointment of guardian-</b> 755 Ill. Comp. Stat. 5/11-5</p> <ul style="list-style-type: none"> <li>● Upon the filing of a petition for the appointment of a guardian or on its own motion, the court may appoint a guardian of the estate or of both the person and estate, of a minor, or may appoint a guardian of the person only of a minor or minors, as the court finds to be in the best interest of the minor or minors...</li> <li>● If the minor is 14 years of age or more, the minor may nominate the guardian of the minor's person and estate, subject to approval of the court. If the minor's nominee is not approved by the court or if, after notice to the minor, the minor fails to nominate a guardian of the minor's person or estate, the court may appoint the guardian without nomination.</li> <li>● The court shall not appoint as guardian of the person of the minor any person whom the court has determined had caused or substantially contributed to the minor becoming a neglected or abused minor as defined in the Juvenile Court Act of 1987,<sup>1</sup> unless 2 years have elapsed since the last proven incident of abuse or neglect and the court determines that appointment of such person as guardian is in the best interests of the minor.</li> </ul>

<p><b>Indiana</b></p>	<p><b>Filing of petition-</b> Ind. Code Ann. § 29-3-5-1(a)  Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter...</p> <p><b>Considerations for appointment of guardian-</b> Ind. Code Ann. § 29-3-5-4  The court shall appoint as guardian a qualified person or persons most suitable and willing to serve, having due regard to the following:</p> <ul style="list-style-type: none"> <li>• Any request made by a person alleged to be an incapacitated person, including designations in a durable power of attorney under IC 30-5-3-4(a).</li> <li>• Any request made for a minor by: <ul style="list-style-type: none"> <li>○ a parent of the minor; or</li> <li>○ a de facto custodian of the minor, including a designation in a power of attorney under IC 30-5-3-4(b) or IC 30-5-3-4(c).</li> </ul> </li> <li>• Any request contained in a will or other written instrument.</li> <li>• A designation of a standby guardian under IC 29-3-3-7.</li> <li>• Any request made by a minor who is at least fourteen (14) years of age.</li> <li>• Any request made by the spouse of the alleged incapacitated person.</li> <li>• The relationship of the proposed guardian to the individual for whom guardianship is sought.</li> <li>• Any person acting for the incapacitated person under a durable power of attorney.</li> <li>• The best interest of the incapacitated person or minor and the property of the incapacitated person or minor.</li> </ul>
<p><b>Iowa</b></p>	<p><b>Preference as to appointment of guardian-</b> Iowa Code Ann. § 633.559</p> <ul style="list-style-type: none"> <li>• Except for a minor child for whom the court's jurisdiction over the child's guardianship was established pursuant to transfer of the child's case in accordance with section 232.104, the parents of a minor child, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity</li> </ul>
<p><b>Kansas</b></p>	<p><b>Appointment of guardian-</b> Kan. Stat. Ann. § 59-3068</p> <ul style="list-style-type: none"> <li>• The court in appointing a guardian or conservator shall give priority in the following order to: <ul style="list-style-type: none"> <li>○ The nominee of the proposed ward or proposed conservatee, if such nomination is made within any durable power of attorney;</li> <li>○ the nominee of a natural guardian;</li> <li>○ the nominee of a minor who is the proposed ward or proposed conservatee, if the minor is over 14 years of age;</li> <li>○ the nominee of the spouse, adult child or other close family member of the proposed ward or proposed conservatee; or</li> <li>○ the nominee of the petitioner.</li> </ul> </li> <li>• The court, in appointing a guardian or conservator, shall consider the workload, capabilities and potential conflicts of interest of the proposed guardian or conservator, or both, before making such appointment, and the court shall give particular attention in</li> </ul>

<p><b>Kansas</b></p>	<p>making such appointment to the number of other cases in which the proposed guardian or conservator, other than a corporation, is currently serving as guardian or conservator, or both, particularly if that number is more than 15 or more wards or conservatees, or both.</p>
<p><b>Kentucky</b></p>	<p><b>Application for appointment of guardian-</b> Ky. Rev. Stat. Ann. § 387.025</p> <ul style="list-style-type: none"> <li>Any interested person or entity may petition the District Court for the appointment of a guardian or limited guardian for an unmarried minor.</li> </ul> <p><b>Matters to be considered by court when making appointment-</b> Ky. Rev. Stat. Ann. § 387.032</p> <ul style="list-style-type: none"> <li>In appointing a guardian, limited guardian, or conservator, the District Court shall appoint any person or entity whose appointment would be in the best interest of the minor, taking into consideration the ability of the person or entity to manage and preserve the minor's estate, and taking into consideration the person or entity nominated pursuant to KRS 387.040 or 387.050.</li> </ul> <p><b>Nomination by minor 14 years or older-</b> Ky. Rev. Stat. Ann. § 387.050</p> <ul style="list-style-type: none"> <li>If the minor is fourteen (14) years of age or older, the minor may, in the presence of the District Court, or by a writing signed in the presence of the judge, after privy examination, nominate his own guardian, limited guardian, or conservator, or if the minor be absent from the county, the minor may after privy examination, in the presence of the District Judge of the county where the minor is, or if the minor be in the military or naval services of the United States, after privy examination, in the presence of a superior commanding officer, by a writing signed in the presence of the judge or superior officer nominate his own guardian, limited guardian, or conservator, provided that the judge or the commanding officer certify to the District Judge of the county having jurisdiction to appoint a guardian, limited guardian, or conservator for the minor that the writing was signed by the minor after privy examination in the presence of the judge or officer.</li> </ul>
<p><b>Louisiana</b></p>	<p><b>Purpose of guardianship-</b> La. Child. Code Ann. art. 718</p> <ul style="list-style-type: none"> <li>The purpose of guardianship is to provide a permanent placement for children when neither reunification with a parent nor adoption has been found to be in their best interest; to encourage stability and permanence in the lives of children who have been adjudicated to be in need of care and have been removed from the custody of their parent; and to increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing supervision by the department.</li> </ul> <p><b>Grounds; hearing; order-</b> La. Child. Code Ann. art. 722</p> <ul style="list-style-type: none"> <li>The mover shall have the burden of proving all of the following by clear and convincing evidence: <ul style="list-style-type: none"> <li>The child has been adjudicated to be in need of care.</li> <li>Neither adoption nor reunification with a parent is in the best interest of the child.</li> <li>The child has resided for at least six months with the proposed guardian, unless the court waives the residence requirement for good cause.</li> <li>The proposed guardian is able to provide a safe, stable, and wholesome home for the child for the duration of minority.</li> </ul> </li> <li>If the child is twelve years of age or older, the court shall solicit and consider his wishes in the matter.</li> </ul>



<p><b>Maine</b></p>	<p><b>Court appointment of guardian-</b> Me. Rev. Stat. Ann. tit. 18, § 5-204  The court may appoint a guardian or coguardians for an unmarried minor if:</p> <ul style="list-style-type: none"> <li>• All parental rights of custody have been terminated or suspended by circumstance or prior court order;</li> <li>• Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;</li> <li>• The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or</li> <li>• The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.</li> </ul> <p><b>Court appointment of guardian; qualifications-</b> Me. Rev. Stat. Ann. tit. 18, § 5-206</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian any person, or as co-guardians more than one person, whose appointment is in the best interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption</li> </ul>
<p><b>Maryland</b></p>	<p><b>Authority to grant guardianship-</b> Md. Code Ann., Fam. Law § 5-320</p> <ul style="list-style-type: none"> <li>• A juvenile court may grant guardianship of a child only if:</li> <li>• the child does not object;</li> <li>• the local department: <ul style="list-style-type: none"> <li>○ filed the petition; or</li> <li>○ did not object to another party filing the petition; and</li> </ul> </li> <li>• each of the child's living parents consents: <ul style="list-style-type: none"> <li>○ in writing;</li> <li>○ knowingly and voluntarily, on the record before the juvenile court; or</li> <li>○ by failure to file a timely notice of objection after being served with a show-cause order in accordance with this subtitle;</li> <li>○ an administrative, executive, or judicial body of a state or other jurisdiction has granted a governmental unit or person other than a parent the power to consent to adoption, and the unit or person consents; or</li> <li>○ parental rights have been terminated in compliance with the laws of a state or other jurisdiction, as described in § 5-305 of this subtitle; or</li> </ul> </li> <li>• in accordance with § 5-323 of this subtitle, the juvenile court finds termination of parental rights to be in the child's best interests without consent otherwise required under this section or over the child's objection.</li> </ul>

<p><b>Maryland</b></p>	<p><b>Grant of guardianship- consensual-</b> Md. Code Ann., Fam. Law § 5-322</p> <ul style="list-style-type: none"> <li>• If all consents for guardianship of a child have been given in accordance with this subtitle and the child has not objected, a juvenile court may enter an order for guardianship.</li> </ul> <p><b>Grant of guardianship- nonconsensual-</b> Md. Code Ann., Fam. Law § 5-323(b)</p> <ul style="list-style-type: none"> <li>• If, after consideration of factors as required in this section, a juvenile court finds by clear and convincing evidence that a parent is unfit to remain in a parental relationship with the child or that exceptional circumstances exist that would make a continuation of the parental relationship detrimental to the best interests of the child such that terminating the rights of the parent is in a child's best interests, the juvenile court may grant guardianship of the child without consent otherwise required under this subtitle and over the child's objection.</li> </ul>
<p><b>Massachusetts</b></p>	<p><b>Court appointment of guardian of minor-</b> Mass. Gen. Laws Ann. ch. 190B, § 5-204(a)</p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for a minor if (i) the minor's parents are deceased or incapacitated, (ii) the parents consent, (iii) the parents' parental rights have been terminated, (iv) the parents have signed a voluntary surrender, or (v) the court finds the parents, jointly, or the surviving parent, to be unavailable or unfit to have custody. A guardian appointed pursuant to section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with another appointment upon a finding that the parental nominee has failed to accept the appointment within 30 days after notice of the guardianship proceeding.</li> </ul> <p><b>Objection by minor fourteen or older-</b> Mass. Gen Laws Ann. ch. 190B, § 5-203</p> <ul style="list-style-type: none"> <li>• Except where the court has previously confirmed a nominee under section 5-202(c), <ul style="list-style-type: none"> <li>○ a minor 14 or more years of age who is the subject of a parental appointment,</li> <li>○ the other parent, if that parent's parental rights have not been terminated, or</li> <li>○ (iii) a person other than a parent having care or custody of the minor or with whom the minor has resided during the 60 preceding days, excluding a foster parent may prevent the appointment or cause it to terminate by filing in the court in which the appointing instrument is filed a written objection to the appointment before it is accepted or within 30 days after receiving notice of its acceptance. An objection may be withdrawn...</li> </ul> </li> </ul>
<p><b>Michigan</b></p>	<p><b>Petition for appointment of guardian</b><sup>5</sup>- Mich. Comp. Laws Ann. § 700.5204</p> <ul style="list-style-type: none"> <li>• A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor. The court may order the family independence agency or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation.</li> <li>• The court may appoint a guardian for an unmarried minor if any of the following circumstances exist: <ul style="list-style-type: none"> <li>○ The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.</li> </ul> </li> </ul>

<sup>5</sup> The court may also review guardianship as it considers necessary, using the factors in Mich. Comp. Laws Ann. § 700.5207.

<p><b>Michigan</b></p>	<ul style="list-style-type: none"> <li>○ The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.</li> <li>○ All of the following: <ul style="list-style-type: none"> <li>▪ The minor's biological parents have never been married to one another.</li> <li>▪ The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.</li> <li>▪ The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.</li> </ul> </li> </ul> <p><b>Appointment of guardian, choice by minor-</b> Mich. Comp. Laws Ann. § 700.5212</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.</li> </ul>
<p><b>Minnesota</b></p>	<p><b>Appointment and status of guardian-</b> Minn. Stat. Ann. § 524.5-201</p> <ul style="list-style-type: none"> <li>• A person becomes a guardian of a minor by parental appointment, by designation of a standby guardian pursuant to chapter 257B, or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.</li> </ul> <p><b>Judicial appointment of guardian; conditions-</b> Minn. Stat. Ann. § 524.5-204</p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and: <ul style="list-style-type: none"> <li>○ both parents are deceased; or</li> <li>○ all parental rights have been terminated by court order.</li> </ul> </li> </ul> <p><b>Judicial appointment of guardian; priority of minor's nominee-</b> Minn. Stat. Ann. § 524.5-206</p> <ul style="list-style-type: none"> <li>• The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor...</li> </ul>
<p><b>Mississippi</b></p>	<p><b>Appointment by court-</b> Miss. Code Ann. § 93-13-13</p> <ul style="list-style-type: none"> <li>• When a testamentary guardian has not been appointed by the parent, or if appointed, has not qualified, the chancery court of the county of the residence of a ward who has an estate, real or personal, shall appoint a general guardian of his estate for him or may appoint a general guardian of his person and estate for him. If a ward have no estate the chancery court of the county of the residence of such ward may appoint a general guardian of his person only for him, giving preference in all cases to the natural guardian, or next of kin, if any apply, unless the applicant be manifestly unsuitable for the discharge of the duties. The court may allow a minor who is over the age of fourteen (14) years and under no legal disability except minority to select a general guardian, by petition to the court, signed and acknowledged before the clerk or a justice of the peace, and duly filed, but if the general guardian so selected by the minor be guardian of the person and estate of the minor or the person only of the minor then such general guardian so selected by said minor shall be a suitable and qualified person who is a resident of this state and the county in which the guardianship proceedings are</li> </ul>

Mississippi	<p>pending... f said minor select a person other than the natural guardian to be either the general guardian of his estate or general guardian of his person and estate or general guardian of his person only the court shall, notwithstanding, have power to appoint the natural guardian, if deemed suitable. And if any such minor over the age of fourteen (14) years fail to appear and select a general guardian of his estate only or of his estate and person or of his person only when summoned, or if the general guardian chosen fail to qualify, and no other be chosen in his stead, the court shall appoint a general guardian to the minor as if he were under fourteen (14) years.</p>
Missouri	<p><b>Who may be appointed guardian of minor-</b> Mo. Ann. Stat. § 475.045</p> <ul style="list-style-type: none"> <li>• Except in cases where they fail or refuse to give required security or are adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be appointed, the following persons, if otherwise qualified, shall be appointed as guardians or conservators of minors: <ul style="list-style-type: none"> <li>○ The parent or parents of the minor, except as provided in section 475.030;</li> <li>○ If any minor over the age of fourteen years has no qualified parent living, a person nominated by the minor, unless the court finds appointment contrary to the best interests of the minor</li> <li>○ Where both parents of a minor are dead, any person appointed under this section or section 475.046 by the will of the last surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or conservator.</li> </ul> </li> </ul> <p><b>Qualifications of guardians-</b> Mo. Ann. Stat. § 475.055</p> <ul style="list-style-type: none"> <li>• Except as herein otherwise provided: <ul style="list-style-type: none"> <li>○ Any adult person may be appointed guardian of the person or conservator of the estate, or both, of a minor or incapacitated or disabled person, except that a parent shall not be denied appointment as guardian of the person of a minor for the reason that the parent is a minor.</li> </ul> </li> </ul>
Montana	<p><b>Court appointment of guardian of minor- when allowed-</b> Mont. Code Ann. § 72-5-222(1)</p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.</li> </ul> <p><b>Guardian of minor by court appointment-</b> Mont. Code Ann. § 72-5-223</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian any person whose appointment would be in the best interests of the minor, including the minor's interest in continuity of care. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.</li> </ul>
Nebraska	<p><b>Court appointment of guardian of minor-</b> Neb. Rev. Stat. § 30-2610</p> <ul style="list-style-type: none"> <li>• The court may appoint as a guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.</li> </ul>
Nevada	<p><b>Preference for qualified and suitable parent as guardian of proposed protected minor-</b> 13 Nev. Rev. Stat. Ann. § 46</p>

<p><b>Nevada</b></p>	<ul style="list-style-type: none"> <li>• ... Subject to the preference set forth in subsection 1 and except as otherwise provided in subsection 7, the court shall appoint as guardian the qualified person who is most suitable and is willing to serve.</li> <li>• In determining which qualified person is most suitable, the court shall, in addition to considering any applicable factors set forth in subsections 2, 3 and 4, give consideration, among other factors, to: <ul style="list-style-type: none"> <li>○ Any nomination of a guardian for the proposed protected minor contained in a will or other written instrument executed by a parent of the proposed protected minor.</li> <li>○ Any request made by the proposed protected minor, if he or she is 14 years of age or older, for the appointment of a person as guardian for the proposed protected minor.</li> <li>○ The relationship by blood or adoption of the proposed guardian to the proposed protected minor. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference: <ul style="list-style-type: none"> <li>▪ Parent.</li> <li>▪ Adult sibling.</li> <li>▪ Grandparent.</li> <li>▪ Uncle or aunt.</li> </ul> </li> <li>○ Any recommendation made by a master of the court or special master pursuant to section 47 of this act.</li> <li>○ Any recommendation made by: <ul style="list-style-type: none"> <li>▪ An agency which provides child welfare services, an agency which provides child protective services or a similar agency; or</li> <li>▪ A guardian ad litem or court appointed special advocate who represents the proposed protected minor.</li> </ul> </li> </ul> </li> <li>• Any request for the appointment of any other interested person that the court deems appropriate.</li> </ul>
<p><b>New Hampshire</b></p>	<p><b>Who may be appointed guardian-</b> N.H. Rev. Stat. Ann. § 463:10</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian of the person of the minor any person or authorized agency whose appointment is appropriate.</li> </ul>
<p><b>New Jersey</b></p>	<p><b>Persons entitled to appointment-</b> N.J. Stat. Ann. § 3B:12-21</p> <ul style="list-style-type: none"> <li>• In an action for the appointment a guardian of the person, guardian of the estate, or a guardian of the person and estate of a minor, the surrogate's court of the county wherein he resides or, if he is a nonresident, where his real or personal estate may be, or the Superior Court, upon inquiry into the circumstances, may appoint the parents or either of them or the survivor of them as the guardian of the person, guardian of the estate or guardian of the person and estate of the minor. If neither parent or the survivor of them will accept the guardianship, then the heirs, or some of them, may be appointed as guardian. If none of the heirs will accept the guardianship, then some other person shall be appointed as the guardian of the person, guardian of the estate or as guardian of the person and estate of the minor. This section shall not be construed to restrict the power of the court to appoint a substitute guardian on the application of the minor or otherwise</li> </ul>

<p><b>New Mexico</b></p>	<p><b>Petition; who may file-</b> N.M. Stat. Ann. § 40-10B-5</p> <ul style="list-style-type: none"> <li>• A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by: <ul style="list-style-type: none"> <li>○ a kinship caregiver;</li> <li>○ a caregiver, who has reached the age of twenty-one, with whom no kinship with the child exists, who has been nominated to be guardian of the child by the child, and the child has reached the age of fourteen; or</li> <li>○ a caregiver designated formally or informally by a parent in writing if the designation indicates on its face that the parent signing understands: <ul style="list-style-type: none"> <li>▪ the purpose and effect of the guardianship;</li> <li>▪ that the parent has the right to be served with the petition and notices of hearings in the action; and</li> <li>▪ that the parent may appear in court to contest the guardianship.</li> </ul> </li> </ul> </li> </ul> <p><b>Hearing; elements of proof-</b> N.M. Stat. Ann. § 40-10B-8</p> <ul style="list-style-type: none"> <li>• Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, the requirements of Subsection B of this section have been proved and the best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will serve the best interests of the minor.</li> <li>• A guardian may be appointed pursuant to the Kinship Guardianship Act only if: <ul style="list-style-type: none"> <li>○ a parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn;</li> <li>○ a parent of the child is living but all parental rights in regard to the child have been terminated or suspended by prior court order; or</li> <li>○ the child has resided with the petitioner without the parent for a period of ninety days or more immediately preceding the date the petition is filed and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance and supervision for the child or there are extraordinary circumstances; and</li> </ul> </li> <li>• no guardian of the child is currently appointed pursuant to a provision of the Uniform Probate Code.</li> <li>• The burden of proof shall be by clear and convincing evidence.</li> </ul> <p><b>Nomination objection by child-</b> N.M. Stat. Ann. § 40-10B-11</p> <ul style="list-style-type: none"> <li>• In a proceeding for appointment of a guardian pursuant to the Kinship Guardianship Act: <ul style="list-style-type: none"> <li>○ the court shall appoint a person nominated by a child who has reached his fourteenth birthday unless the court finds the nomination contrary to the best interests of the child; and</li> <li>○ the court shall not appoint a person as guardian if a child who has reached his fourteenth birthday files a written objection in the proceeding before the person accepts appointment as guardian.</li> </ul> </li> </ul>
<p><b>New York</b></p>	<p>N.Y. Soc. Serv. Law § 384-b</p> <ul style="list-style-type: none"> <li>• The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to section one thousand eighty-nine of the family court act to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody</li> </ul>

<p><b>New York</b></p>	<p>is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency...</p> <ul style="list-style-type: none"> <li>• An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds: <ul style="list-style-type: none"> <li>○ Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or</li> <li>○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or</li> <li>○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, are presently and for the foreseeable future unable, by reason of mental illness or intellectual disability, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or</li> <li>○ The child is a permanently neglected child; or</li> <li>○ The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with section one hundred eleven of the domestic relations law, severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination...</li> </ul> </li> </ul>
<p><b>North Carolina</b></p>	<p><b>Criteria for appointment of guardians-</b> N.C. Gen. Stat. Ann. § 35A-1224</p> <ul style="list-style-type: none"> <li>• The clerk may appoint a guardian of the estate for any minor. The clerk may appoint a guardian of the person or a general guardian only for a minor who has no natural guardian.</li> <li>• The clerk may appoint as guardian of the person or general guardian only an adult individual whether or not that individual is a resident of the State of North Carolina.</li> <li>• The clerk may appoint as guardian of the estate an adult individual whether or not that individual is a resident of the State of North Carolina or a corporation that is authorized by its charter to serve as a guardian or in similar fiduciary capacities.</li> <li>• If the minor's parent or parents have made a testamentary recommendation pursuant to G.S. 35A-1225 for the appointment of a guardian, the clerk shall give substantial weight to such recommendation; provided, such recommendation may not affect the rights of a surviving parent who has not willfully abandoned the minor, and the clerk</li> </ul>

<b>North Carolina</b>	shall in every instance base the appointment of a guardian or guardians on the minor's best interest.
<b>North Dakota</b>	<p><b>Court appointment of guardian of minor- conditions for appointment-</b> N.D. Cent. Code Ann. § 30.1-27-04</p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in section 30.1-27-02 whose appointment has not been prevented or nullified under section 30.1-27-03 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.</li> </ul> <p><b>Court appointment of guardian of minor- qualifications-</b> N.D. Cent. Code Ann. § 30.1-27-06</p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is fourteen years of age or older, unless the court finds the appointment contrary to the best interests of the minor.</li> </ul>
<b>Ohio</b>	<p><b>Appointment of guardian-</b> Ohio Rev. Code Ann. § 2111.02</p> <ul style="list-style-type: none"> <li>• If found necessary, a probate court on its own motion or on application by any interested party shall appoint, subject to divisions (C) and (D) of this section and to section 2109.21 and division (B) of section 2111.121 of the Revised Code, a guardian of the person, the estate, or both, of a minor or incompetent, provided the person for whom the guardian is to be appointed is a resident of the county or has a legal settlement in the county...</li> </ul> <p><b>Guardian of minor-</b> Ohio Rev. Code Ann. § 2111.12</p> <ul style="list-style-type: none"> <li>• A minor over the age of fourteen years may select a guardian who shall be appointed if a suitable person. If a minor over the age of fourteen years fails to select a suitable person, an appointment may be made without reference to the minor's wishes. The minor shall not select one person to be the guardian of the minor's estate only and another to be the guardian of the person only, unless the court that appoints the guardian is of the opinion that the interests of that minor will be promoted by that selection.</li> <li>• A surviving parent by a will in writing may appoint a guardian for any of the surviving parent's children, whether born at the time of making the will or afterward, to continue during the minority of the child or for a less time...</li> </ul>
<b>Oklahoma</b>	<p><b>Guardian of minor to be appointed-</b> Okla. Stat. Ann. tit. 30, § 2-101(a)</p> <ul style="list-style-type: none"> <li>• The court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or both of them, of minors.</li> </ul> <p><b>Nomination and appointment of guardian- age of minor-</b> Okla. Stat. Ann. tit. 30, § 2-103</p> <ul style="list-style-type: none"> <li>• If the minor is under the age of fourteen (14) years, the court may name and appoint his guardian. If the minor has attained the age of fourteen (14) years, the minor may nominate his own guardian, who, if approved by the court, must be appointed accordingly.</li> </ul>
<b>Oregon</b>	<p><b>Petition for permanent guardianship-</b> Or. Rev. Stat. Ann. § 419B.365</p> <ul style="list-style-type: none"> <li>• At any time following establishment of jurisdiction and wardship under ORS 419B.100, but prior to filing of a petition under ORS 419B.500, or after dismissal of a petition filed</li> </ul>



<p><b>Oregon</b></p>	<p>under ORS 419B.500 if it fails to result in termination of the parent's rights, a party, or person granted rights of limited participation for the purpose of filing a guardianship petition, may file, and the court may hear, a petition for permanent guardianship. If the Department of Human Services chooses not to participate in a proceeding initiated by an intervenor under ORS 419B.875, the state is not foreclosed from filing a subsequent action should the intervenor's petition be denied.</p> <ul style="list-style-type: none"> <li>• The grounds for granting a permanent guardianship are the same as those for termination of parental rights.</li> <li>• The court shall grant a permanent guardianship if it finds by clear and convincing evidence that: <ul style="list-style-type: none"> <li>○ The grounds cited in the petition are true; and</li> <li>○ It is in the best interest of the ward that the parent never have physical custody of the ward but that other parental rights and duties should not be terminated...</li> </ul> </li> </ul>
<p><b>Pennsylvania</b></p>	<p><b>Persons not qualified to be appointed by the court-</b> 20 Pa. Stat. and Cons. Stat. Ann. § 5112</p> <ul style="list-style-type: none"> <li>• The court shall not appoint as guardian of the estate of a minor any person who is: <ul style="list-style-type: none"> <li>○ Under 18 years of age.</li> <li>○ A corporation not authorized to act as fiduciary in the Commonwealth.</li> <li>○ A parent of the minor, except that a parent may be appointed a co-guardian with another fiduciary or fiduciaries.</li> </ul> </li> </ul> <p><b>Persons preferred in appointment-</b> 20 Pa. Stat. and Cons. Stat. Ann. § 5113</p> <ul style="list-style-type: none"> <li>• A person of the same religious persuasion as the parents of the minor shall be preferred as guardian of his person. A person nominated by a minor over the age of 14, if found by the court to be qualified and suitable, shall be preferred as guardian of his person or estate.</li> </ul>
<p><b>Rhode Island</b></p>	<p><b>Appointment of guardians for minors-</b> 33 R.I. Gen Laws § 33-15.1-5</p> <ul style="list-style-type: none"> <li>• A probate court may appoint a guardian of a minor under the age of fourteen (14) years. A minor of the age of fourteen (14) years or over may nominate his or her own guardian, who, if approved by the probate court, shall be appointed accordingly.</li> </ul> <p><b>Appointment in lieu of guardian nominated by minor-</b> 33 R.I. Gen Laws § 33-15.1-6</p> <ul style="list-style-type: none"> <li>• If a minor of the age of fourteen (14) years shall neglect to choose a guardian when cited by the court to do so, or shall choose one whom the court does not approve, or one who shall neglect to give bond as required by the court or by law, the court may appoint a guardian in the same manner as if the minor were under the age of fourteen (14) years.</li> </ul>
<p><b>South Carolina</b></p>	<p>There is no statutory law addressing guardians of minors in South Carolina</p>
<p><b>South Dakota</b></p>	<p><b>Nomination of guardian or conservator by minor or parent-</b> S.D. Codified Law § 29A-5-202</p> <ul style="list-style-type: none"> <li>• A minor, age fourteen or older, may nominate any individual or entity to act as his guardian or conservator. The nomination may be made in writing or by an oral request to the court. The court may appoint the individual or entity so nominated if the nominee is otherwise eligible to act and would serve in the minor's best interests. However, no nomination by a minor may supersede a previous appointment by the court.</li> <li>• A parent of an unmarried minor may nominate a guardian or conservator of the minor by will or other signed writing. Absent an effective nomination by the minor, the court may appoint a parental nominee if both parents are dead and the nominee is otherwise eligible to act and would serve in the minor's best interests. In the event that both parents have made nominations, the court shall select the nominee which it believes best qualified. A parental nomination shall be effective whether or not the minor was living</li> </ul>

<p><b>South Dakota</b></p>	<p>at the time of the making of the will or other signed writing. However, no parental nomination may supersede a previous appointment by the court.</p> <ul style="list-style-type: none"> <li>• Absent an effective nomination by a minor, age fourteen or older, or deceased parent, the court shall appoint as guardian or conservator the individual or entity that will act in the minor's best interests. In making that appointment, the court shall consider the proposed guardian's or conservator's geographic location, familial or other relationship with the minor, ability to carry out the powers and duties of the office, commitment to promoting the minor's welfare, any potential conflicts of interest, the recommendations of the parents or other interested relatives, and the wishes of the minor if the minor is of sufficient age to form an intelligent preference. The court may appoint more than one guardian or conservator and need not appoint the same individual or entity to serve as both guardian and conservator.</li> </ul> <p><b>Who may file petition for appointment-</b> S.D. Codified Law § 29A-5- 203</p> <ul style="list-style-type: none"> <li>• A petition for the appointment of a guardian, a conservator, or both, may be filed by the minor, by an interested relative, by the individual or facility that is responsible for or has assumed responsibility for the minor's care or custody, by the individual or entity that the minor has nominated as guardian or conservator, or by any other interested person, including the department of human services or the department of social services...</li> </ul>
<p><b>Tennessee</b></p>	<p><b>Petition for appointment-</b> Tenn. Code Ann. § 34-2-102</p> <ul style="list-style-type: none"> <li>• A petition for the appointment of a guardian may be filed by any person having knowledge of the circumstances necessitating the appointment of a guardian.</li> </ul> <p><b>Priorities and preferences; appointments-</b> Tenn. Code Ann. § 34-2-103</p> <ul style="list-style-type: none"> <li>• Subject to the court's determination of what is in the best interests of the minor, the court shall consider the following persons in the order listed for appointment of the guardian: <ul style="list-style-type: none"> <li>○ The parent or parents of the minor;</li> <li>○ The person or persons designated by the parent or parents in a will or other written document;</li> <li>○ Adult siblings of the minor;</li> <li>○ Closest relative or relatives of the minor; and</li> <li>○ Other person or persons.</li> </ul> </li> </ul>
<p><b>Texas</b></p>	<p><b>Application for appointment of guardian-</b> Tex. Est. Code Ann. § 1101.001(a)</p> <ul style="list-style-type: none"> <li>• Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.</li> </ul> <p><b>Findings and proof required-</b> Tex. Est. Code Ann. § 1101.101</p> <ul style="list-style-type: none"> <li>• Before appointing a guardian for a proposed ward, the court must: <ul style="list-style-type: none"> <li>○ find by clear and convincing evidence that: <ul style="list-style-type: none"> <li>▪ the proposed ward is an incapacitated person;</li> <li>▪ it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian;</li> <li>▪ the proposed ward's rights or property will be protected by the appointment of a guardian;</li> <li>▪ alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and</li> </ul> </li> </ul> </li> </ul>

<p><b>Texas</b></p>	<ul style="list-style-type: none"> <li>▪ supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and</li> <li>○ find by a preponderance of the evidence that: <ul style="list-style-type: none"> <li>▪ the court has venue of the case;</li> <li>▪ the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;</li> <li>▪ if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and</li> <li>▪ the proposed ward: <ul style="list-style-type: none"> <li>• is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or</li> <li>• lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.</li> </ul> </li> </ul> </li> </ul> <p><b>Selection of guardian by minor- Tex. Est. Code Ann. § 1104.054</b></p> <ul style="list-style-type: none"> <li>• Notwithstanding any other provision of this subchapter, if an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor may select the guardian by a writing filed with the clerk, if the court finds that the selection is in the minor's best interest and approves the selection.</li> <li>• Notwithstanding any other provision of this subchapter, a minor at least 12 years of age may select another guardian of the minor's person or estate, or both, if the minor has a guardian appointed by the court, by will of the minor's parent, or by written declaration of the minor's parent, and that guardian dies, resigns, or is removed from guardianship. The minor must make the selection by filing an application in open court in person or by an attorney. The court shall make the appointment and revoke the letters of guardianship of the former guardian if the court is satisfied that: <ul style="list-style-type: none"> <li>○ the person selected is suitable and competent; and</li> <li>○ the appointment of the person is in the minor's best interest.</li> </ul> </li> </ul>
<p><b>Utah</b></p>	<p><b>Court appointment of guardian of minor- conditions for appointment- Utah Code Ann. § 75-5-204</b></p> <ul style="list-style-type: none"> <li>• The court may appoint a guardian for an unemancipated minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will under Section 75-5-202, or by written instrument under Section 75-5-202.5, whose appointment has not been prevented or nullified under Section 75-5-203 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary or instrumental guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.</li> </ul> <p><b>Court appointment of guardian of minor- qualifications- Utah Code Ann. § 75-5-206</b></p> <ul style="list-style-type: none"> <li>• The court may appoint as guardian any person whose appointment would be in the best interests of the minor.</li> <li>• In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs.</li> </ul>

<b>Utah</b>	<ul style="list-style-type: none"> <li>• Except as provided in Subsection (3), the court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best interests of the minor.</li> </ul>
<b>Vermont</b>	<p><b>Petition for guardianship of minor-</b> Vt. Stat. Ann. tit. 14, § 2623</p> <ul style="list-style-type: none"> <li>• A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a guardian for a child....</li> </ul> <p><b>Guardians; individuals who may serve-</b> Vt. Stat. Ann. tit. 14, § 3072</p> <ul style="list-style-type: none"> <li>• Competent individuals of at least 18 years of age may serve as guardians...</li> <li>• In appointing an individual to serve as guardian, the court shall take into consideration: <ul style="list-style-type: none"> <li>○ the nomination of a guardian in an advance directive or in a will;</li> <li>○ any current or past expressed preferences of the respondent;</li> <li>○ the geographic location of the proposed guardian;</li> <li>○ the relationship of the proposed guardian and the respondent;</li> <li>○ the ability of the proposed guardian to carry out the powers and duties of the guardianship;</li> <li>○ the willingness and ability of the proposed guardian to communicate with the respondent and to respect the respondent's choices and preferences.</li> </ul> </li> </ul>
<b>Virginia</b>	<p><b>Appointment of guardians-</b> Va. Code Ann. § 64.2-1702</p> <ul style="list-style-type: none"> <li>• The circuit court or the circuit court clerk of any county or city in which a minor resides or, if the minor is an out-of-state resident, in which the minor has any estate may appoint a guardian for the estate of the minor and may appoint a guardian for the person of the minor unless a guardian has been appointed for the minor pursuant to § 64.2-1701.</li> </ul>
<b>Washington</b>	<p><b>Authority to appoint guardians-</b> Wash. Rev. Code Ann. § 11.88.010</p> <ul style="list-style-type: none"> <li>• The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention</li> </ul> <p><b>Qualifications-</b> Wash. Rev. Code Ann. § 11.88.020</p> <ul style="list-style-type: none"> <li>• Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is <ul style="list-style-type: none"> <li>○ under eighteen years of age except as otherwise provided herein;</li> <li>○ of unsound mind;</li> <li>○ convicted of a felony or of a misdemeanor involving moral turpitude;</li> <li>○ a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;</li> <li>○ a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;</li> </ul> </li> </ul>

<b>Washington</b>	<ul style="list-style-type: none"> <li>○ a person whom the court finds unsuitable.</li> </ul>
<b>West Virginia</b>	<p><b>Appointment and termination of guardian for a minor-</b> W. Va. Code Ann. § 44-10-3</p> <ul style="list-style-type: none"> <li>• ...Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent...</li> <li>• The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and: <ul style="list-style-type: none"> <li>○ The parents consent;</li> <li>○ The parents' rights have been previously terminated;</li> <li>○ The parents are unwilling or unable to exercise their parental rights;</li> <li>○ The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or</li> <li>○ There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied...</li> </ul> </li> </ul> <p><b>Right of minor to nominate guardian-</b> W. Va. Code Ann. § 44-10-4</p> <ul style="list-style-type: none"> <li>• If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly.</li> <li>• If the guardian nominated by the minor is not appointed by the court, or if the minor resides outside the state, or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.</li> </ul>
<b>Wisconsin</b>	<p><b>Appointment of guardian-</b> Wis. Stat. Ann. § 54.10(1)</p> <ul style="list-style-type: none"> <li>• A court may appoint a guardian of the person or a guardian of the estate, or both, for an individual if the court determines that the individual is a minor.</li> </ul> <p><b>Selection of guardian; nominations; preferences-</b> Wis. Stat. Ann. § 54.15</p> <ul style="list-style-type: none"> <li>• The court shall consider all of the following in determining who is appointed as guardian: <ul style="list-style-type: none"> <li>○ Opinions of proposed ward and family. The court shall take into consideration the opinions of the proposed ward and of the members of his or her family as to what is in the best interests of the proposed ward. However, the best interests of the proposed ward shall control in making the determination when the opinions of the family are in conflict with those best interests.</li> <li>○ Potential conflicts of interest. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest.</li> <li>○ Agent under durable power of attorney. The court shall appoint as guardian of the estate an agent under a proposed ward's durable power of attorney, unless the court finds that the appointment of an agent is not in the best interests of the proposed ward.</li> <li>○ Agent under a power of attorney for health care. The court shall appoint as guardian of the person the agent under a proposed ward's power of attorney for</li> </ul> </li> </ul>

<p><b>Wisconsin</b></p>	<p>health care, unless the court finds that the appointment of the agent is not in the best interests of the proposed ward.</p> <ul style="list-style-type: none"> <li>○ Person nominated by proposed ward. <ul style="list-style-type: none"> <li>▪ Any individual other than a minor aged 14 years or younger may, if the individual does not have incapacity to such an extent that he or she is unable to form a reasonable and informed preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating another to be appointed as guardian of his or her person or estate or both if a guardian is in the future appointed for the individual. The court shall appoint this nominee as guardian unless the court finds that the appointment is not in the best interests of the proposed ward.</li> <li>▪ A minor who is 14 years or older may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is outside of the state, or if other good reason exists, the court may dispense with the minor's right of nomination.</li> <li>▪ If neither parent of a minor who is 14 years or older is suitable and willing to be appointed guardian, the court may appoint the nominee of the minor.</li> </ul> </li> <li>○ Parent of a proposed ward. If one or both of the parents of a minor or an individual with developmental disability or with serious and persistent mental illness are suitable and willing, the court shall appoint one or both as guardian unless the court finds that the appointment is not in the proposed ward's best interest. The court shall consider a proposed ward's objection to the appointment of his or her parent.</li> <li>○ Testamentary nomination by proposed ward's parents. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate for any of his or her minor children who is in need of guardianship, unless the court finds that appointment of the guardian or successor guardian is not in the minor's best interests. For an individual who is aged 18 or older and is found to be in need of guardianship by reason of a developmental disability or serious and persistent mental illness, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of a bond for such an estate that is derived through a will.</li> </ul>
<p><b>Wyoming</b></p>	<p><b>Petition for appointment of guardian-</b> Wyo. Stat. Ann. § 3-2-101</p> <ul style="list-style-type: none"> <li>• Any person may file with the clerk a petition for the appointment of a guardian.</li> </ul> <p><b>Who may be appointed as guardian-</b> Wyo. Stat. Ann. § 3-2-107</p> <ul style="list-style-type: none"> <li>• The court may appoint any qualified person as guardian of an incompetent person or a minor. The court may not appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian: <ul style="list-style-type: none"> <li>○ Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian;</li> <li>○ Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian;</li> <li>○ Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or</li> <li>○ Is employed by a person who would be disqualified under paragraphs (i) through (iii) of this subsection.</li> </ul> </li> </ul>

**Wyoming**

- A person may be appointed as guardian of a respondent, notwithstanding the provisions of subsection (a) of this section that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the respondent.