

Conduct and Findings of Guardianship Proceedings
(As of statutory revisions December 31, 2008)

<u>State</u>	<u>Hearing</u>	<u>Convenient Location</u>	<u>Presence in Court</u>	<u>Jury Trial</u>	<u>Standard of Proof</u>	<u>Required Findings</u>	<u>Tailored Order</u>
UGPPA	305(a), 405(a) Shall set a date and time for hearing	308(a), 408(a) May be held in location convenient to respondent	308(a), 408(a) Respondent and proposed guardian/conservator shall appear unless excused for good cause	<i>Not stated</i>	311(a)(1) Clear & convincing 409(b) A basis exists	311(a)(1) Is incapacitated person, needs cannot be met by less restrictive means 409(b) A basis exists for conservatorship, make least restrictive order consistent with findings	311(b) Make orders necessitated by limitations and needs, that encourage self reliance and independence 409(b) Make orders necessitated by limitations and needs, that encourage self reliance and independence
Alabama:	26-2A-135(b) Court set hearing date when petition filed 26-2A-102	<i>Not stated</i>	26-2A-102(c) Entitled to be present	26-2A-35 Entitled to jury trial 26-2A-102(c) Trial by jury, upon demand	<i>Not stated</i>	26-2A-105(a) Court authority only to extent necessitated by condition or limitations	26-2A-154 26-2A-136 26-2A-144
Alaska: Statute	13.26.106 (a) Conducted within 120 days from filing the petition	<i>Not stated</i>	13.26.113(a)(5) Unless disruptive	13.26.113(a)(6) Entitled to jury trial	13.26.113 (b) Clear & convincing	13.26.090 Used only as is necessary	13.26.116
Arizona: Rev. Stat. Ann.	14-5303 Upon filing petition, court shall set hearing date	<i>Not stated</i>	14-5303(C) Entitled to be present	14-5303(C) Entitled to jury trial	14-5304(A) Clear & convincing	14-5304(B) Appointment is necessary & needs cannot be met by less restrictive means including technological assistance	14-5312(A) Statutory powers unless modified by court 14-5304(C) May appoint limited guardian & specify time limits & limits on powers

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Arkansas: Code Ann.	28-65-213(a)	<i>Not stated</i>	28-65-211(b)(3) May require presence in court 28-65-213(a)(5) Right to attend	<i>Not stated</i>	28-65-213(b) Clear & convincing	28-65-105 Ordered only to extent necessitated by individual's limitations	28-65-105 28-65-106 Ward retains all rights except those expressly granted to guardian
California: Prob. Code	1822 Set at least 15 days before the hearing	<i>Not stated</i>	1825(a) Present except medical inability 1823(b)(5) Right to attend	1827 If demanded	1801(e) Clear & convincing	<i>Not stated</i>	2351 Court discretion to limit 1801 For developmentally disabled
Colorado: Rev. Stat. Ann.	15-14-308	<i>Not stated</i>	15-14-308(1) Shall attend unless good cause	15-14-303(4) On written demand	15-14-311(1) Clear & convincing	15-14-311(1) Court make appointment only to extent necessitated by condition or limitation; no less restrictive means	15-14-311 Shall consider least restrictive alternative; may limit powers

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Connecticut: Gen. Stat. Ann.	45a-649 45a-650	45a-649(e) May hold at place that would facilitate attendance by respondent	45a-650(a) Right to attend	<i>Not stated</i>	45a-650(f)(1), (2) Clear & convincing	45a-650(f)(1) Incapable of managing affairs, cannot be managed without appointment, appointment is least restrictive 45a-650(f)(2) Incapable of caring for self, cannot be cared for adequately without appointment, appointment is least restrictive 45a-650(g) Comprehensive list of factors court must consider	33-15-4 Shall clearly indicate scope of powers and duties; certificate shall clearly state is limited
Delaware: Code Ann. tit. 12	12 3901(c)	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	12 3922 To extent court may direct
District of Columbia: Code Ann.	21-2054 (a)	<i>Not stated</i>	21-2041(h) Unless good cause shown		21-2003 Clear & convincing	21-2044(b) Appointment necessary for care & supervision	21-2047(b)(6) 21-2072
Florida: Stat. Ann.	744.331(4)	<i>Not stated</i>	744.331(5) (b) Waived for good cause	<i>Not stated</i>	744.331(6) Clear & convincing	744.331(6)(a) Nature and scope of capacities, areas lack capacity, specific legal disabilities, specific rights incapable of exercising and if alternative	744.3215(1) 744.334(2)

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Georgia: Code Ann.	29-4-12	29-4-12(d) Courtroom or where the judge may choose	29-4-12(d) May be waived for good cause	<i>Not stated</i>	29-4-12(d) Clear & convincing	29-4-1(c) Determination that LRA not available or appropriate	29-4-12(d) List powers to be retained 29-4-13(3) Limits in order 29-4-20(6) Right to least restrictive assistance
Hawaii: Rev. Stat.	560:5-308 Guardian shall attend	560:5-308, -408 Convenient, closed if requested	560:5-308 Shall attend and participate unless excluded 560:5-408 shall attend and participate unless excused for good cause	<i>Not stated</i>	560:5-311(a) Clear and convincing 560:5-401(2) Clear and convincing that unable to manage and preponderance that be wasted unless managed by conservator	560:5-311(a), - Needs not met by least restrictive alternative 560:5-401 Property be wasted unless managed	560:5-311 Shall grant only what necessitated by ward's limitations and needs, encourage maximum self-reliance and independence
Idaho: Code	15-5-303(b)	<i>Not stated</i>	15-5-303(c) Required unless good cause	15-5-307 For removal of guardian	15-5-304 (b) If court satisfied	15-5-304(a) Court shall appoint only to extent necessitated by condition and limitations	15-5-426 15-5-408 15-5-304 To extent necessary
Illinois: 75/5 Ill. Comp Stat.	5/11a-10(a)	<i>Not stated</i>	5/11a-11(a) unless ward refuses	5/11a-11(a)	5/11a-3(a) Clear and convincing	5/11a-39b) If guardianship necessary to promote well-being; to protect from neglect, exploitation or abuse	5/11a-3(b) 5/11a-12 5/11a-17(2)

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Indiana: Code Ann.	29-3-5-19 (c)	<i>Not stated</i>	29-3-5-1(d) 29-3-5-1(d) Impossible, impractical, threat to health, safety	29-3-5-1(e) If requested	<i>Not stated</i>	29-3-5-3(a)(2) Providing care & supervision	29-3-5-3(b) 29-3-7-3(c) 29-3-8-8 29-3-5-1 Community volunteer advocate for 55+ for 60 days max. 29-3-5-3 Can represent and protect interests, gather information, facilitate care, advocate for rights 29-3-8-5—9 No medical decisions if spouse, other surrogate available
Iowa: Code Ann.	<i>Not stated</i>	<i>Not stated</i>	633.561(2) Right to be present	633.555 IF demanded	633.551(1) Clear & convincing	<i>Not stated</i>	633.551(A) 633.556(2) 633.635(3)
Kansas: Rev. Stat. Ann.	59-3063(a)(1) Trial in as informal a manner as consistent with orderly procedure	59-3063(a)(1) Courtroom, treatment facility or other suitable place	59-3063(a)(2) Required to appear unless injurious to health or welfare or could not meaningfully participate or waived	59-3066(a)(8) &(9); 59-3067(b) & (c) Right to demand	59-3067(e) Clear & convincing	59-3067(e) Court must find need for guardian, conservator, or both	59-3075 Guardian exercise authority as necessitated by ward's limitations; 59-3075 Guardianship plan
Kentucky: Rev. Stat. Ann.	387.550	<i>Not stated</i>	387.570(3) Waived only if serious risk of harm	387.570(1) Mandatory	387.570(5) Clear & convincing	<i>Not stated</i>	387.500

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Louisiana: Civ. Code Ann.; Code Civ. Pro.; Rev. Stat. Ann.	CCP Art. 4547	CCP 4547 Judge may hold hearing where respondent located	CCP 4547 Right to be present. Court shall not conduct hearing in absence unless good cause.	<i>Not stated</i>	CCP 4548 Clear & convincing	389 Interests cannot be protected by less restrictive means	390; 455 1(B); Only powers necessitated CCP 4541 Petition names powers sought to be removed
Maine: Me. Rev. Stat. Ann. tit. 18	18-A 5-303(b)	<i>Not stated</i>	18-A 5-303(c) entitled to be present	<i>Not stated</i>	<i>Not stated</i>	18-A 5-304(a) Court shall appoint only if necessitated by limitations or condition	18-A 5-105 18-A 5-408 18-A 3-304 (a)
Maryland: Code Ann., Est. & Trusts; MD Rules	R77(b)(2)	<i>Not stated</i>	13-705(e) At ward's option	13-705(e) Ward's option in guardianship 13-211 No jury trial in protective proceedings	13-705 Clear & convincing	13-705(b) No less restrictive form is available	13-708(a) As necessary
Massachusetts: Gen. Laws ch.	201 7	<i>Not stated</i>	201 6 Presence required unless extraordinary circumstances 201 6 Right to attend	<i>Not stated</i>	<i>Not stated</i>	201 1 If necessary or convenient	<u>In re Bassett</u> , 385 NE 2d 1024 (Mass. App. Ct. 1979)
Michigan: Comp. Laws Ann.	700.5303(2) 700.5406	700.5304(4) 700.5406(5) All practical steps to ensure presence, including moving hearing site	700.5304(4) 700.5406(5) Entitled to be present	700.5304(5) 700.5406(5) Entitled to jury	700.5306(1) 700.5406(7) Clear & convincing	700.5306 (1) If necessary for providing care & supervision	700.5306 700.5407 Only those powers necessary, encourage self reliance

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Minnesota: Stat. Ann.	524.5-307(a) & 408(a)	524.5-307(a) & 408(a) Location convenient to respondent	524.5-307(a) & 408(a) Shall attend & participate unless excused for good cause	<i>Not stated</i>	524.5-310(a) & 409(a) Clear & convincing; 409(a)(2) Preponderance that resources be wasted or dissipated or needed for support, care	524.5-310(a) Needs cannot be met by least restrictive alternative	524.5-310(a) Limited or not; 310(c); 409(c) Only power necessitated by demonstrated need & encourage self-reliance; retain rights not specifically granted
Mississippi: Code Ann.	93-13-121	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Not stated</i>	93-13-38 Court has power as over executor
Missouri: Ann. Stat.	475.075.1	<i>Not stated</i>	475.075(8) Right to be present	475.075(8)(2) Right to jury	475.075.7 Clear & convincing	475.075(10) Shall apply least restrictive environment principle	<i>Not stated</i>
Montana: Code Ann.	72-5-315	<i>Not stated</i>	72-5-315(4) Entitled to be present	72-5-315(4) Entitled to jury	72-5-316(1) If court satisfied	72-5-316 Necessary to promote & protect wellbeing	72-5-320 72-5-430 72-5-321 72-5-306
Nebraska: Rev. Stat.	30-2619(b)	<i>Not stated</i>	30-2619(d) Entitled to be present	<i>Not stated</i>	30-2620 Clear & convincing	30-2620 Necessary or desirable as least restrictive alternative	
Nevada: Rev. Stat	159.047	<i>Not stated</i>	159.0535(1) Must attend, unless physician or other qualified certifies condition & that cannot attend	<i>Not stated</i>	159.055(1) Clear & convincing proof that guardianship necessary	159.055 Evidence sufficient & guardian should be appointed	159.054(2) Shall specify powers & duties if limited capacity

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New Hampshire: Rev. Stat. Ann.	464-A:5	<i>Not stated</i>	464-A:8 Must be present unless excused under provisions of this chapter	<i>Not stated</i>	464-A:8IV Beyond reasonable doubt	464-A:1 Only to extent necessitated by individual's functional limits	464-A:1 464-A:9(III)(d) 464-A:25(II)
New Jersey: Stat. Ann.; N.J. Rules	3B:12-5	<i>Not stated</i>	3B:12-24.1(e) Shall appear unless plaintiff & ct. appointed attorney certify unable	3B:12-24 May be had without jury unless demanded by alleged incapacitated person	<i>Not stated</i>	<i>Not stated</i>	3B:12-24.1(b) Court can appoint limited guardian
New Mexico: Stat. Ann.	45-5-303(C)	45-5-303(G) At the location of alleged incapacitated person who is unable to appear in court	45-5-303(F) Shall be present at hearing	45-5-303(L) Upon request of petitioner or alleged incapacitated person	45-5-303(H) Clear & convincing	45-5-301.1 Only as necessary to promote and protect well being of the person	45-5-301.1 45-5-304(c) 45-5-312 45-5-303(A)(10)
New York: Mental Hyg. Law	81.11	81.11 At courthouse or where person resides	81.11 Hearing must be conducted in presence of person alleged to be incapacitated	81.07(c)	81.12 Clear & convincing	81.02 Least restrictive form of intervention	81.01
North Carolina: Gen. Stat.	35A-1112	<i>Not stated</i>	<i>Not stated</i>	35A-1110 Right, upon request	35A-1112(d) Clear, cogent & convincing	<i>Not stated</i>	35A-1212 Clerk may order limited guardianship; 35A-1215(b) Clerk my order that ward retain certain rights & privileges

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North Dakota: Cent. Code	30.1-29-07(2) 30.1-28-03(3)	30.1-28-03(8) At any other location in best interest of proposed ward	30.1-28-03(7) Must be present unless good cause shown	<i>Not stated</i>	30.1-29-7(2)(b) Clear & convincing	30.1-28-04(1) Only to extent necessitated	
Ohio: Rev. Code Ann.	2111.02(c)	<i>Not stated</i>	2111.04(A)(2) Right to be present	<i>Not stated</i>	2111.02(c)(3) Clear & convincing	2111.02(c)(5) Evidence of least restrictive alternative may be introduced and considered	2111.02(B)(1) Limited guardian if in best interest
Oklahoma: Stat. Ann. tit. 30	30-3-109	30 1-116(A) At such place as court directs	30 3-106 Right to be present	<i>Not stated</i>	30-3-111 Clear & convincing	30 3-111(B) Court shall explain reasons not to impose less restrictive alternatives	30 3-111(B) Full or limited guardian.
Oregon: Rev. Stat.	125.080 On petition or motion if respondent objects	<i>Not stated</i>	125.080 May appear in person or by counsel	<i>Not stated</i>	125.305 Clear & convincing	125.300 As necessary to promote and protect well-being of protected person	125.305
Pennsylvania: Cons. Stat. Ann.	20-5511(a)	20-5511(a) May be held at residence	20-5511(a) Shall be present unless would harm proposed ward or out of state	20-5511(a) If requested	20-5511(a) Clear and convincing	<i>Not stated</i>	20-5502
Rhode Island: Gen. Laws	33-15-5 Before probate judge of city where petition was filed	<i>Not stated</i>	33-15-5(1) Right to be present	<i>Not stated</i>	33-15-5(3) Clear and convincing	33-15-4 Not appoint if needs can be met with least restrictive alternative	33-15-4 Guardian makes decisions only in areas where person lacks capacity

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South Carolina: Code Ann.	62-5-407(b) Upon receipt of petition, shall set date	<i>Not stated</i>	62-5-303(b) Entitled to be present	<i>Not stated</i>	62-5-304(B) If court satisfied that appointment necessary	62-5-304(A) Only to extent necessitated by mental and adaptive limitations	62-5-416 62-5-312
South Dakota: Codified Laws Ann.	29A-5-308 Within 60 days of filing and at least 14 days before hearing	29A-5-312 Convenient place as court determines	29A-5-312 Shall attend except for good cause	29A-5-308 Entitled to demand jury trial	29A-5-312 Clear and convincing	29A-5-312 Extent necessary to prevent neglect, abuse, or exploitation	29A-5-312
Tennessee: Code Ann.	34-1-108 More than 7, but less than 60 days after notice to respondent or GAL	<i>Not stated</i>	34-1-106(4) Right to attend	<i>Not stated</i>	34-1-126 Clear and convincing	34-1-127 Duty to impose least restrictive	34-1-129 Clerk marks order if limited
Texas: Prob. Code Ann.	644	<i>Not stated</i>	685 Must be present unless ct deems not necessary	643 Entitled on request in contested proceeding 685 Entitled on request	684 Clear and convincing that person is incapacitated, that in best interest to appoint G, and that rights or property be protected	<i>Not stated</i>	693
Utah: Code Ann.	75-5-302	<i>Not stated</i>	75-5-303(4) Shall be present	75-5-303(4)	<i>Not stated</i>	75-5-304 Necessary or desirable	75-5-304(2) Limited guardian preferred
Vermont: Stat. Ann. tit. 14	14-3068	14-3068(b) Setting not likely to have harmful effect on mental and physical health	14-3068(a) may attend	<i>Not stated</i>	14-3068(f) Clear & convincing	14-3068(f) Respondent is in need of guardianship	14-3069

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Virginia: Code Ann.	37.2-1004(A) Promptly set time and date	37.2-1007 Convenient place	37.2-1007 Entitled to be present	37.2-1007 Entitled upon request	37.2-1007 Clear and convincing	37.2-1007 Extent necessary for protection; ct. consider listed factors	37.2-1009 Nature and extent of powers
Washington: Rev. Code Ann.	11.88.030 Within 60 days of petition	11.88.040(4) May remove to place of residence	11.88.040(4) Shall be present	11.88.045(3)	11.88.045(3) Clear and convincing	11.88.005 Minimum extent necessary	11.88.010(2)
West Virginia: Code	44A-2-9(a)	44A-2-9(b) At convenient place	44A-2-9(c) Shall not proceed without good cause affidavit	44A-2-9(c) Not entitled	44A-2-9 Clear and convincing	44A-2-10(c) Not beyond what is absolutely necessary	44A-2-11
Wisconsin: Stat. Ann.	54.44	54.42(6) Shall hold at place person may attend 54.44(3) By telephone	54.42(5) 54.44(3) 54.38(2)(a) Petitioner shall ensure attends unless GAL specifies reasons in writing	54.42(2) If demanded	54.10(3)(a) 54.44(2) Clear and convincing	54.46(1)(a) Find if incompetent or spendthrift; advance planning renders unnecessary	54.18 Only exercise powers as authorized by order; granted powers are necessary and are LRA
Wyoming: Stat.	3-1-205	<i>Not stated</i>	3-1-205 Be present at any hearing	3-2-103 May demand jury trial	3-2-104(a) Preponderance	3-2-104(b) Order states reasons guardian needed	3-1-206 Least restrictive & most appropriate order

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