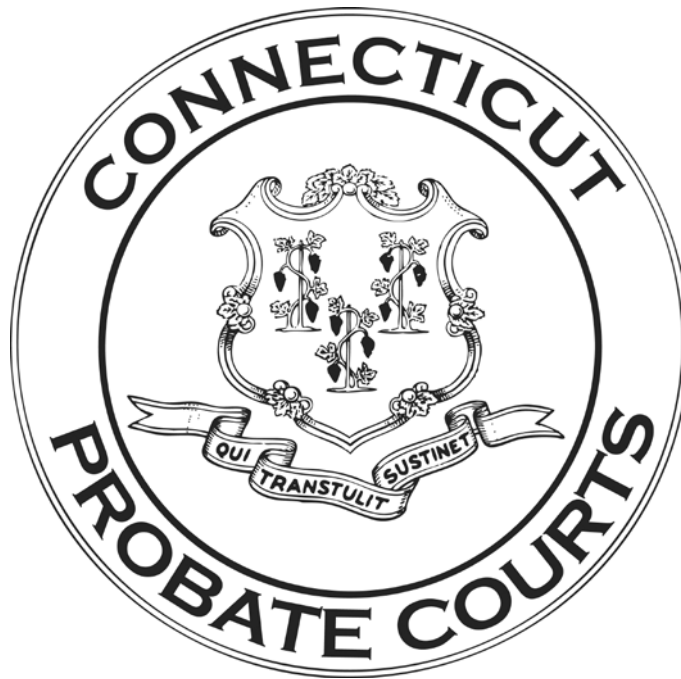


# **PROBATE COURT USER GUIDE**

## **PERSONS WITH INTELLECTUAL DISABILITY**



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COMPLIMENTS OF YOUR LOCAL PROBATE COURT

## **INTRODUCTION**

This user guide is intended to answer some of the questions you may have regarding the procedures, roles and responsibilities of the Probate Court and a guardian for a person with intellectual disability. For specific information regarding the probate process and procedures, please review the relevant Connecticut General Statutes and the Probate Court Rules of Procedure. This booklet should be considered only as a guide on the guardianship process and not as a substitute for competent professional advice.

Forms for procedures involving persons with intellectual disability and other probate matters are available online at [ctprobate.gov](http://ctprobate.gov). Click on "Forms." Forms are also available at the Probate Courts.

## **Guardianship of Persons with Intellectual Disability**

Every person in the State of Connecticut who is 18 years of age or older is considered legally capable of directing his or her personal and financial affairs. Persons with intellectual disability, however, may be partially or totally unable to meet essential requirements for their physical health or safety and/or unable to make informed decisions about matters related to their care. To address these needs, the Probate Court may appoint a guardian to supervise all aspects or certain aspects of the care of an adult with intellectual disability. The levels of intellectual disability range from mild to profound, and a court-appointed guardian is not necessary for all adults with intellectual disability.

### **What is intellectual disability?**

“Intellectual disability” is defined by statute as a significant limitation in intellectual functioning existing concurrently with deficits in adaptive behavior that originated during the developmental period before 18 years of age. A “significant limitation in intellectual functioning” is defined as an intelligence quotient (“IQ”) more than two standard deviations below the mean, as measured by standard tests of general intellectual functioning. This means that the person’s IQ must be 69 or less.

The court can appoint a guardian if it finds that the person has intellectual disability in accordance with this statutory definition. Not everyone with a developmental disability will fall within this definition. For example, a person on the autism spectrum may have an IQ above the statutory standard for intellectual disability. While a guardian could not be appointed for a person whose IQ is higher than 69, other avenues might be available to assist the person. The appointment of a conservator, for example, could provide an appropriate alternative.

*For further information, see the Probate Court User Guide for Conservators.*

### **Who can be a guardian of an adult with intellectual disability?**

Any adult person, legally authorized state official or nonprofit organization or business may be appointed guardian of an adult with intellectual disability. A hospital or nursing home, however, cannot be appointed as guardian.

### **How is a guardian appointed?**

A family member or other concerned person may petition the Probate Court to establish a guardianship. If a parent or guardian anticipates that a minor child will require a guardian upon turning 18, the parent or guardian may file a petition for guardianship up to 180 days before the child’s 18<sup>th</sup> birthday.

The term “respondent” refers to a person for whom a guardianship petition has been filed. If the Probate Court determines that the person has intellectual disability and appoints a guardian, he or she is then referred to as a “protected person.” The petition

must be filed in the Probate Court in the district where the respondent's permanent home is located or where the respondent currently resides or is currently located. The petitioner is responsible for paying various court fees unless the court finds that the petitioner is indigent and unable to pay the fees. For example, the petitioner is responsible for paying the filing fee, for service of process fees, for additional notices, for additional copies and for recording documents.

The court will schedule a hearing within 45 days of receipt of the petition. A state marshal or other person assigned by the court will serve in hand notice of the hearing to the respondent. The court will also send notice to the petitioner and the respondent's relatives at least seven days before the hearing.

At the hearing, the petitioner must provide proof that the respondent is totally or partially unable to meet essential requirements for his or her physical health and safety and/or is unable to make informed decisions about matters relating to his or her care because of the severity of his or her intellectual disability.

### **Is the respondent entitled to an attorney?**

Yes. The court will appoint an attorney to represent the respondent at the hearing. If the respondent is unable to pay for the services of an attorney, the Probate Court Administration Fund may pay the attorney's fees.

### **Where will the hearing be held?**

Usually, the hearing is held at the Probate Court. Because the respondent must be present, the hearing may be held at another location, such as a group home, if necessary to facilitate the respondent's attendance.

### **What is required at the hearing?**

At the hearing, the court will hear evidence concerning the respondent's condition. The petitioner should be prepared to present evidence about the respondent based on recent behavior. The respondent must be present at the hearing with limited exceptions. The court should be informed if the respondent is on medication.

In addition, professionals from the Department of Developmental Services (DDS) will complete and file a written assessment of the respondent in the 45 days preceding the hearing. The DDS assessment team will provide the court with a report setting forth its determination whether the respondent has intellectual disability and, if so, the severity of the condition. The evaluation will also provide information regarding the specific areas, if any, in which the respondent requires the supervision and protection of a guardian. DDS professionals who completed the assessment may testify at the hearing.

The court will appoint a guardian if it finds by clear and convincing evidence that the respondent has intellectual disability and is totally or partially unable to meet essential requirements for his or her physical health or safety and totally or partially unable to make informed decisions about matters relating to his or her care. The court may appoint either a **plenary guardian** or a **limited guardian**.

- (1) A **plenary guardian** supervises all aspects of the care of a protected person who, by reason of the severity of his or her intellectual disability, is “**totally** unable to meet essential requirements for his or her physical health or safety” and “**totally** unable to make informed decisions about matters related to his or her care.”
- (2) A **limited guardian** supervises only certain specified aspects of a protected person's care because the court finds that the respondent is able to do **some**, but not all, of the tasks necessary to meet essential requirements for his or her physical health or safety or make **some**, but not all, informed decisions about matters related to his or her care.

When deciding whom to appoint as plenary or limited guardian, the court will consider the best interests of the respondent, including his or her preference. Frequently, the court will appoint the respondent's parents or relatives as guardians.

### **What are the powers and duties of a plenary or limited guardian?**

The Probate Court may give a guardian the power to make decisions in the following areas:

- (1) Residence outside the family home;
- (2) Specifically designed educational, vocational or behavioral programs;
- (3) The release of clinical records and photographs;
- (4) Routine, elective and emergency medical and dental care;
- (5) Any other specific services necessary to develop or regain to the maximum extent possible the protected person's capacity to meet essential requirements.

A plenary guardian will be given **all** of the powers set forth above. A limited guardian will be given only those powers deemed necessary by the court.

A guardian of a person with intellectual disability may also file a petition in the Probate Court to determine a protected person's competency to vote in a primary, referendum or general election.

## **Can a guardian have authority to manage the protected person's finances?**

In many cases, the protected person can handle his or her own finances with assistance from the guardian or family or from an agency that provides support services. If the protected person receives social security, the guardian or a family member may be appointed representative payee to manage the social security income.

If these arrangements do not meet the protected person's needs, and the protected person's assets do not exceed \$10,000, the guardian can petition the Probate Court for control of the protected person's income and assets. The court may require the guardian to submit a probate bond. In addition, unless excused by the court, the guardian is required to file an inventory of the protected person's assets and periodic financial reports that document how the guardian is managing the protected person's finances.

## **What happens if the protected person has more than \$10,000 in assets?**

The court cannot give a guardian authority to manage a protected person's finances if the protected person's assets are worth more than \$10,000. If the protected person is unable to manage his or her finances and the assets exceed \$10,000, a conservator of the estate may be needed.

*For further information, please see the Probate Court User Guide for Conservators.*

## **What are the limitations on the authority of a plenary or limited guardian?**

Except as permitted by statute, a plenary or limited guardian shall **not** have the power or authority:

- (1) To cause the protected person to be admitted to any institution for treatment of psychiatric disability;
- (2) To cause the protected person to be admitted to a training school if there is a conflict between the guardian and the protected person or family;
- (3) To consent to sterilization or psychosurgery;
- (4) To consent to the termination of the protected person's parental rights;
- (5) To consent to any experimental biomedical or behavioral medical procedure;
- (6) To admit the protected person to any residential facility operated by an organization that employs the guardian;
- (7) To prohibit the marriage or divorce of the protected person;
- (8) To consent on behalf of the protected person to an abortion or removal of a body organ.

## **How are decisions made about the needs and well-being of the protected person?**

Working within the authority granted by the court, a plenary or limited guardian is the primary decision-maker with respect to the protected person's well-being. The guardian should encourage the protected person to participate in the decision-making process and should consult with the protected person's family.

## **Is there a faster process to appoint a guardian if there is a medical emergency?**

If an adult with intellectual disability is in need of elective surgical, medical or dental procedures or treatment involving the use of general anesthesia but does not have a guardian, a family member or other concerned person may file a *Petition/Appointment of Temporary Limited Guardian of Person with Intellectual Disability, PC-7006*. The petition must include two certificates, one signed by a physician and one signed by a licensed psychologist. The certificates must indicate, based on an examination within the preceding 30 days, whether:

- (1) the respondent's condition renders him or her incapable of giving informed consent to the procedure, **and**
- (2) without such treatment, the respondent will suffer deterioration of his or her physical or mental health or serious discomfort.

The court will conduct a hearing. If the court finds it necessary, a temporary limited guardian will be appointed for the purpose of consenting to the procedure. If the court is unable to find a suitable guardian, it may appoint the Commissioner of Developmental Services. A temporary appointment is valid for no more than 60 days.

## **How often is a guardianship reviewed?**

A plenary or limited guardian must submit an annual report to the court regarding the protected person's condition. The plenary or limited guardian must also file a report if the guardian resigns, is removed or when the guardianship is terminated. The plenary or limited guardian must also file a report with the court if there is a significant change in the protected person's capacity to meet essential requirements for his or her physical health or safety. A plenary or limited guardian may use a *Guardian's Report/Guardianship of Person with Intellectual Disability, PC-771*, to report to the court.

At least every three years, the court must review each plenary or limited guardianship to determine the appropriateness of continuing, modifying or terminating the guardianship. Not later than 45 days after a request from the court, the guardian and DDS must each submit a written report to the court about the protected person's condition. A DDS assessment is not required for a protected person with severe or profound intellectual disability. The court will forward copies of the reports to the protected person's attorney. The attorney must visit with the protected person and inform the court in writing if a

hearing is requested. No order expanding or reducing the powers or responsibilities of the guardian may be issued unless a hearing is held.

If the guardian has authority over the protected person's finances, the guardian must submit a financial report at the end of the first year and every three years thereafter. The guardian may use a *Financial Report Conservator/Guardian, PC-442*, to account to the court.

### **Can a guardian be removed after appointment?**

Yes. When deciding whether to remove a guardian, the determining factor for the court is the best interests of the protected person.

### **What happens when a protected person changes his or her residence within Connecticut?**

If a protected person becomes a resident of a town in another probate district, the guardian or other interested party may apply to transfer the protected person's file to the Probate Court serving the new location.

### **What is a standby guardian?**

Whenever a court appoints a plenary or limited guardian, it may also appoint a standby guardian to act if the plenary or limited guardian dies, becomes incapable or resigns.

The court must be informed **immediately** if the standby guardian assumes responsibility for the protected person.

### **Visitation**

Any parent of an adult with intellectual disability who has a guardian may file a motion for visitation with the Probate Court that has jurisdiction over the guardianship. After notice and hearing, the court may grant visitation and order a schedule with specific date(s), time(s) and place(s) of visits (including overnight visits, if permitted) and any other conditions that the judge believes to be in the best interests of the protected person.

### **Sterilization**

Sterilization is defined in the Connecticut General Statutes as "a surgical or other medical procedure the purpose of which is to render an individual permanently incapable of procreating." Because of its serious consequences, sterilization in Connecticut is available only to persons who have attained the age of eighteen and have given written informed consent. Our state laws provide many safeguards designed to protect the interests of those who may not be able to give informed consent, including adults with intellectual disability and persons under conservatorship.

Sterilization may not be performed for a person under guardianship unless the Probate Court finds that the procedure is in the person's best interests.

At a hearing held after proper petition and notice, the court will consider medical, social, educational and psychological evidence to determine if the sterilization procedure is in the person's best interests. Such a determination must include all of the following factors:

- (1) Whether less drastic alternative contraceptive methods have proved workable;
- (2) Whether the person is physiologically sexually mature;
- (3) Any evidence of infertility;
- (4) Whether the person has the capability and a reasonable opportunity for sexual activity;
- (5) The person's inability to understand reproduction or contraception and the likelihood of permanence of that inability;
- (6) The physical or emotional inability to care for a child;
- (7) Whether the proponent of the sterilization is seeking the sterilization in good faith, with a primary concern for the best interests of the person rather than for convenience;
- (8) If, in the case of a woman, whether procreation would endanger the life or severely impair the health of the person.

### **Under what circumstances can a person with intellectual disability be involuntarily placed in a state facility?**

The Probate Court has the power to place a person with intellectual disability in the care of DDS if it finds the person has intellectual disability AND:

- (1) Is unable to arrange at least one of the following: education, self-development, care for his or her personal and mental health needs, food, shelter, clothing and/or protection from harm;
- (2) Has no available family or guardian to provide care;
- (3) Is unable to obtain essential services in the absence of placement; and
- (4) Is unwilling to voluntarily accept placement with DDS.

The placement must be in an appropriate setting that meets the developmental needs of the protected person in the least restrictive environment available.

### **Probate Appeals**

Any party who is aggrieved by a decision of the Probate Court may appeal to the Superior Court. The deadline for filing the appeal is generally 30 days after the date on which the court sent the order.

## **Conclusion**

Safeguarding the rights of persons with intellectual disability is of paramount importance when guardianship, sterilization or involuntary placement is contemplated. An adult person with intellectual disability, while of the age of full legal rights, may be unable to act for himself or herself in many circumstances. A guardian undertakes serious responsibilities and should always seek competent professional advice when making decisions that will affect the protected person.