

**ADULT PROTECTIVE SERVICES AGENCY AUTHORITY TO ACT AS GUARDIAN OF A CLIENT:
GUIDANCE AND PROVISIONS FROM ADULT PROTECTIVE SERVICES LAWS, BY STATE**

(Laws current as of 12/31/06)

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Research conducted on Westlaw compliments of West Group

CAUTION: Read the explanation of this chart before relying upon the chart. You can find the explanation online at <http://www.abanet.org/aging/about/elderabuse.shtml>.

STATE	APS AUTHORIZED TO ACT AS GUARDIAN OF A CLIENT?	STATUTORY PROVISION(S) AND CITATION(S)
Alabama	No	... The department shall not be appointed as guardian or conservator and shall not be appointed custodian other than for the limited purpose, where appropriate, of transporting an adult for protective placement as ordered by the court... Ala. Code § 38-9-6(g)
Alaska	No provision	
Arizona	No	The department or a protective services worker employed by the department may not be appointed as guardian, conservator or temporary guardian. Ariz. Rev. Stat. Ann. § 46-452(B)
Arkansas (#1) Ark. Code Ann. §§ 12-12-1701 – 12-12-1721 (<i>relating to reporting & investigation</i>)	No provision	
Arkansas (#2) Ark. Code Ann. §§ 9-20-101 – 9-20-121 (<i>authorizing APS to take victims into protective custody</i>)	Yes, APS may be appointed by a probate court as a legal custodian of a maltreated adult, which has authority similar or equivalent to the authority of a guardian of the person	(a)(1) If the probate division of circuit court appoints the Department of Health and Human Services as the legal custodian of a maltreated adult, the department shall: (A) Secure care and maintenance for the person; (B) Honor any advance directives, such as living wills, if the legal documents were executed in conformity with applicable laws; and (C) Find a person to be guardian of the estate of the adult if a guardian of the estate is needed. (2) If the court appoints the department as the legal custodian of a maltreated adult, the department may: (A) Consent to medical care for the

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		adult; (B) Obtain physical or psychological evaluations; and (C) Obtain medical, financial, and other records of the adult. Ark. Code Ann. § 9-20-120(a)
California	Temporary conservator only	<p>A designated county agency shall initiate an investigation and file a petition for issuance of an emergency protective services order within 24 hours after the endangered adult has been taken into temporary emergency protective custody. [NOTE: APS is a designated county agency.] Cal. Welf. & Inst. Code § 15705(a)</p> <hr/> <p>In its emergency order under this article, the court shall appoint the petitioner, next of kin, or other interested person, as appropriate, as a temporary conservator of the endangered adult. Cal. Welf. & Inst. Code § 15705.15(d)(1)</p> <hr/> <p>This chapter shall be operative in a county only if the county board of supervisors has adopted a resolution to make this chapter operative in that county. Cal. Welf. & Inst. Code § 15705.37</p>
Colorado	No provision	
Connecticut	Conservator of person only	The Probate Court may appoint, if it deems appropriate, the Commissioner of Social Services to be the conservator of the person of such elderly person. Conn. Gen. Stat. Ann. § 17b-456(c)
Delaware	No	In its order, the Court shall appoint the petitioner or another interested person other than the service provider as temporary guardian of the person of the infirm. The temporary guardian shall assume responsibility for the person's welfare and be granted therein authority to give consent for the person for the approved protective services until the expiration of the order. Del. Code Ann. tit. 31, § 3908(b)(4)
District of Columbia	No provision	

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Florida	No provision	
Georgia	No provision	
Guam	No provision	
Hawaii	No provision	
Idaho	No	An employee or contractor of the commission shall not be appointed the guardian or conservator of a vulnerable adult unless the commission employee or contractor has a spousal or familial relationship with the vulnerable adult. Idaho Code § 39-5306(5)
Illinois	No provision	
Indiana	No provision	
Iowa	No provision	
Kansas	No provision	
Kentucky	No provision	
Louisiana	No provision	
Maine	Temporary guardian only	When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section 5- 310-A, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there. Me. Rev. Stat. Ann. tit. 22, § 3483(1)
Maryland	Yes	If, as a result of a proceeding that the director institutes under this subtitle, the court appoints the director as guardian, the guardianship: (1) shall transfer automatically to each individual who becomes director, unless the court terminates the guardianship; and (2) may not be delegated to any other person. Md. Code Ann., Fam. Law § 14-307(e)

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Massachusetts (EPS) Mass. Gen. Laws Ann. ch. 19A, §§ 14 – 26 (<i>applicable to persons who are 60 or older</i>)	Yes	A protective services agency is authorized:...to serve as conservator, guardian, or temporary guardian of a protected person; and...Mass. Gen. Laws Ann. ch. 19A, § 17(6)
Massachusetts (APS) Mass. Gen. Laws ch. 19C, §§ 1 – 13 (<i>applicable to persons with disabilities</i>)	No provision	
Michigan	No provision	
Minnesota	Yes	In proceedings under sections 524.5-101 to 524.5-502, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on behalf of the ward or protected person even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court. Minn. Stat. Ann. § 626.557, Subd. 10(c)

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Mississippi	No	The court may appoint a guardian or conservator for the vulnerable adult, but the court shall not appoint the department as a guardian of the vulnerable adult. No vulnerable adult may be committed to a mental health facility under this chapter. However, nothing contained herein shall prohibit the filing of petitions under other applicable provisions of the laws of this state. Miss. Code. Ann. § 43-47-13(4)
<p>Missouri (#1) Mo. Ann. Stat. §§ 660.250 – 660.295 (<i>applicable only to persons who are unable to protect their own interests or adequately perform or obtain services necessary to meet their essential human needs and are either: (1) 60 or older, or (2) between 18 and 59 and have a disability</i>)</p>	No provision	
<p>Missouri (#2) Mo. Ann. Stat. §§ 660.300 – 660.321 (<i>these provisions are applicable only to individuals who are receiving “in home services” as defined by § 660.250(9) “through any in-home services provider agency” as defined by § 660.250(11). Missouri does not have two statutes. We established this construct to distinguish in the charts between the provisions applicable to individuals who are receiving in home services and those who are not. The statute indicated that the definitions contained in 660.250 apply to what</i></p>	No provision	

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<i>we have labeled as Missouri #2; 660.300 – 660.321.)</i>		
Montana	No provision	
Nebraska	No provision	
Nevada	No provision	
New Hampshire	No provision	
New Jersey	No provision	
New Mexico	Yes	<p>“(P)rotective services agency” means a corporation, board or organization authorized by the department pursuant to the Adult Protective Services Act to furnish protective services to protected or incapacitated adults or to serve as conservators or guardians of protected or incapacitated adults upon appointment by a court. N.M. Stat. Ann. § 27-7-16(T)</p> <hr/> <p>A protective services agency is authorized to:...(5) serve as conservator, guardian or temporary guardian of a protected or incapacitated adult; N.M. Stat. Ann. § 27-7-21(B)(5)</p> <hr/> <p>... (T)he department and its employees are prohibited from:... (b) acting as guardians or conservators for any adult in need of protective services, except that an employee may serve in that capacity when related by affinity or consanguinity to an adult; (c) acting as treatment guardians under the Mental Health and Developmental Disabilities Code except that an employee may serve in that capacity when related by affinity or consanguinity to an adult; ... [NOTE: (1) This provision only applies to ex parte orders for emergency protective services or emergency protective placement; (2) the department (of children, youth, and families) administers the APS program but does not serve as the protective services agency.] N.M. Stat. Ann. §§ 27-7-25(E)(5)(b) – 27-7-25(E)(5)(c)</p>

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New York	No provision	
North Carolina	No provision	
North Dakota	No provision	
Ohio	No provision	
Oklahoma	Yes	<p>The Department, as temporary guardian of a vulnerable adult, may also sell the real property of the vulnerable adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act prior to the one-year requirement specified in subparagraph b of this paragraph, if not selling the real property would jeopardize the vulnerable adult's eligibility for Medicaid. The fact that the vulnerable adult would be in jeopardy for receipt of Medicaid if the property was not sold shall be stated upon the court order directing the sale of the real property of the vulnerable adult. Okla. Stat. Ann. tit. 43A, § 10-108(F)(2)(c)</p> <hr/> <p>...During the hearing to consider the motion to continue the temporary guardianship of the vulnerable adult for up to one hundred eighty (180) calendar days, the court shall consider the Department's findings and proposed plan of care and any other evidence presented by the caretaker, guardian or other interested persons. The court shall either terminate the temporary guardianship and all involuntary services or continue the temporary guardianship and specify any necessary services to be provided by the Department for a period not to exceed one hundred eighty (180) calendar days. Provided, the court may continue the guardianship of the Department, if there is no one willing and able to act as guardian for the vulnerable adult. Okla. Stat. Ann. tit. 43A, § 10-108(M)(4)(c)</p>
Oregon (EPS) Or. Rev. Stat. §§ 124.050 – 124.095	No provision	

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<i>(applicable to persons 65 or older who are not residents of long-term care facilities)</i>		
Oregon (APS) Or. Rev. Stat. §§ 430.735 – 430.768 <i>(applicable only to persons 18 or older who are mentally ill or developmentally disabled and receive services from a community program or facility)</i>	No provision	
Pennsylvania	No provision	
Puerto Rico	No provision	
Rhode Island	No provision	
South Carolina	No provision	
South Dakota	No provision	
Tennessee	Not required but not prohibited	...Nothing in this section shall be construed as requiring the department to initiate proceedings for the appointment of a conservator or a temporary guardian or to accept such appointment if proceedings are instituted or to initiate proceedings under title 34, chapter 1 or 3. Tenn. Code Ann. § 71-6-107(c)
Texas	No	(e) The department may not be appointed to serve as temporary or permanent guardian for any individual. Tex. Hum. Res. Code Ann. §§ 48.209(e)
Utah	Temporary guardian only	In its emergency order, the court may appoint the petitioner or another interested person as temporary guardian, in accordance with Section 75-5-310. Utah Code Ann. § 62A-3-320(4)
Vermont	No provision	
Virgin Islands	No provision	
Virginia	Temporary guardian only	In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the adult's welfare and authority to give consent for the adult for the approved adult protective services until the expiration of the

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		order. Va. Code Ann. § 63.2-1609(B)(4)
Washington	No provision	
West Virginia	No provision	
Wisconsin (EPS) Wis. Stat. Ann. § 46.90 (<i>applicable to persons who are 60 or older</i>)	No provision	
Wisconsin (APS) Wis. Stat. Ann. §§ 55.001 – 55.23 (<i>applicable to adults with disabilities</i>)	No	No guardian appointed under ch. 54 or ch. 880, 2003 stats., may be a provider of protective services or protective placement for its ward under this chapter. Wis. Stat. Ann. § 55.03(1)
Wyoming	No provision	

¹ The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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