



## Quick Reference Guide for Court Orders in APS

### Protective Service Orders (Routine, Emergency and Ex-Parte)

In some circumstances, the APS agency can obtain court orders to gain access to an older adult:

- When a caregiver refuses to allow APS to see the adult.
- To provide services to an adult who refuses services and is a risk to self or others.

The type of petition filed and the order requested depend on the urgency of the situation, whether the adult is incapacitated, and what the APS agency is trying to accomplish.

- For example, provision of services, removal of a perpetrator from the home, etc.

Under APS law, **an incapacitated person** is a person who is impaired for any reason to the extent that the person lacks sufficient understanding or capacity to make and carry out reasonable decisions concerning the person's self or resources, with or without the assistance of a caretaker.

Refusal to consent to the provision of services shall not be the sole determinative that the person is incapacitated.

### Protective Service Order -Routine

**Reason for request:** non-emergency

- Caseworker is seeking treatment for a chronic condition and/or lack of safe housing or shelter.
- The older adult is in a stable short-term setting. The wait for the hearing date does not pose a risk to the older adult.
- The older adult, family, or non-family members make threats to remove the older adult from the medical setting however no immediate actions are taken.
- History of the older adult, family, or non-family members interfering with the older adult's medical decisions or care needs.
- The older adult is new to the county and has not met the residency requirements.
- The older adult lacks an appropriate guardianship applicant.



### **Hearing Rights Routine PSO**

- Notice of a petition for the provision of court-ordered protective services shall be personally served upon the adult who is the subject of the petition at least 5 working days prior to the date set for the hearing. The court shall hold a hearing on the petition within 14 days after its filing.
- A court order provided shall remain in effect for no longer than 6 months.
- Renewal - Thereafter, the county department of job and family services shall review the adult's need for continued services and, if the department determines that there is a continued need, it shall apply for a renewal of the order for additional periods of no longer than 1 year each.

### **Protective Service Order -Emergency**

#### **Reason for Request: Urgent Situation is evident**

To issue an emergency protective services order, the court must find that the adult is incapacitated, that an emergency exists, and that there is reason to believe there is substantial risk of immediate and irreparable physical or financial harm to the adult. They also must find that there is no person authorized by law or the court to give consent for the adult.

- Medical care or evaluation needed to treat a new or acute condition
- Geriatric care or evaluation needed to treat a new or acute condition
- Homelessness may expose older adult to harsh elements
- High risk to older adult if no action by APS is taken
- Extended wait for the hearing date may result in harm to older adult.
- The older adult is unable to consent to the case plan and there is no legal decision maker available
- The older adult, family, or non-family members make threats and attempts to remove the older adult from a medical setting
- The older adult's case plan would require an admission to a hospital, Gero-Psychiatric, LTAC, Rehabilitation, Intermediate Care LTC Placement, or Hospice.



### Hearing Rights Emergency PSO

- The notice shall be given to its recipients at least 24 hours prior to the hearing. Upon receipt of a petition for an order for emergency services, the court shall hold a hearing no sooner than 24 and no later than 72 hours after the notice has been given, unless the court has waived the notice.
- The court may order emergency services only for 14 days.
- Renewal - The county department, the department's designee, or the county prosecutor may petition the court for a renewal of the order for a 14-day period upon a showing that continuation of the order is necessary to remove the emergency.

### Protective Service Order -Ex-Parte

**Reason for Request:** Critical situation

To issue an ex-parte order, the court must find that the adult is incapacitated, that an emergency exists, and that there is reason to believe there is substantial risk of immediate and irreparable physical or financial harm to the adult.

- Acute and potentially life-threatening condition is evident.
- The older adult would suffer irreversible harm if no action is taken and a 24 hour delay for a court hearing may result in physical harm to the older adult.
- The older adult's case plan would require him or her to remain in the current setting such as: hospital, LTAC, rehabilitation, or hospice.
- The older adult is in need of essential medical treatment.

### Hearing Rights Ex-Parte PSO

- No Hearing Notice - hearing rights waived.
- An order issued under this section shall be in effect for not longer than 24 hours, except that if the day following the day on which the order is issued is not a working day, the order shall remain in effect until the next working day.
- Renewal - If a temporary order is issued it is effective for 30 days. The court may renew the order for an additional 30-day period.



## Guardianships

A guardian is any person, association, or corporation appointed of the person, the estate, or both of an incompetent adult or minor.” Use of a guardianship is not limited to older adults. However, an adult must be determined incompetent for the court to appoint a guardian.

Although guardianship is often the first thing people think of when an elder appears unable to make sound decisions, there are several less restrictive alternatives. These options must be explored prior to establishing a guardianship.

The Ohio Revised Code defines an incompetent person as someone who meets either of the following criteria:

- Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse.
- The person is incapable of taking proper care of the person’s self or property or fails to provide for the person’s family or other persons for whom the person is charged by law to provide.
- Any person confined to a correctional institution within this state.
- The guardian of an older adult is legally responsible for making health and/ or economic decisions on behalf of the older adult.
- Guardianship is a part-legal, part-social relationship.
- A guardianship is established through a legal proceeding, and the duties are carried out in a social service context.

There are different types of guardianships. Each has a different scope of authority and level of responsibility:

- Guardian of the Person- has the authority to make decisions about daily living, medical care and treatment, and residential decisions, including placement and selection of providers for day-to-day care.
- Guardian of the Estate- is responsible for preserving the adult’s income and assets and managing any lawsuits or litigation. This person has the authority to expend funds on behalf of the adult and must work in conjunction with the Guardian of the Person.
- Full Guardian of Person and Estate- has all the responsibilities and authority listed for Guardian of the Person and Guardian of the Estate.



- Interim Guardian - is appointed to replace a former guardian on a temporary basis. The initial appointment can be for 15 days with the possibility of a 30-day extension. This type of guardianship can be established without the adult's presence (ex-parte).
- Emergency Guardian- This type of appointment also can be made ex-parte and is done to prevent imminent harm to the person or estate. An Emergency Guardian is appointed initially for 72 hours, although it can be extended for up to 30 days. Local courts may have specific procedures for appointing an Emergency Guardian.
- Limited Guardian- Guardian is a Guardian of the Person or a Guardian of the Estate who is appointed to address a specific time, problem or need. The court has broad discretion to impose limitations on the scope of authority and level of responsibility a Limited Guardian has with respect to decision-making for the adult. The probate court judge who made the appointment is responsible for monitoring the guardianship.

Although guardianship applications are governed by ORC 2111.01–2111.51 and the Rules of Superintendence for the Courts of Ohio (Sup. R. 66.01-66.09), each county probate court can require specific forms and procedures for individuals in that county.

## Conservatorships

Conservatorships also are authorized by statute (ORC 2111.021) and are used when an individual is mentally competent but physically infirm.

The probate court will appoint someone to assist the individual and carry out day-to-day tasks without requiring the individual to surrender all decision-making authority. A conservatorship is a voluntary trust relationship using certain guardianship laws and procedures subject to court supervision.

**Pros:** Gives the adult ability to decide the person and authority of the conservator; Can be time-limited or modified at any time; Provides accountability to the court

**Cons:** Loss of personal autonomy in areas given to the conservator; Requires court action to modify or terminate, based upon request by the adult and determination that the adult is competent