

633.551 General provisions.

1. The determination of incompetency of the adult respondent to a petition for guardianship or conservatorship or an adult subject to guardianship or conservatorship shall be supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the protected person is the petitioner, the protected person shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the protected person is incompetent.

3. In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the district court shall consider if a limited guardianship or conservatorship pursuant to [section 633.635](#) or [633.637](#) is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the respondent or protected person is incompetent as defined in [section 633.3](#), the court shall consider credible evidence as to whether there are other less restrictive alternatives, including third-party assistance, that would meet the needs of the respondent or the protected person. However, neither party to the action shall have the burden to produce such evidence relating to other less restrictive alternatives, including but not limited to third-party assistance.

5. Except as otherwise provided in [sections 633.672](#) and [633.673](#), in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees, court visitor fees, and expert witness fees, shall be assessed against the respondent or the respondent's estate unless the proceeding is dismissed either voluntarily or involuntarily, in which case fees and costs may be assessed against the petitioner for good cause shown.

6. Except as otherwise provided in [this subchapter](#), the rules of civil procedure shall govern proceedings to establish, modify, or terminate a guardianship or conservatorship.

[97 Acts, ch 178, §4](#); [2007 Acts, ch 134, §15, 28](#); [2019 Acts, ch 57, §9, 43, 44](#)

Referred to in [§633.552](#), [633.553](#), [633.635](#), [633.675](#), [633.717](#)

2019 amendment takes effect January 1, 2020, and applies to guardianships and guardianship proceedings for adults and conservatorships and conservatorship proceedings for adults and minors established or pending before, on, or after that date; 2019 Acts, ch 57, §43, 44

Section amended