

## APPENDIX A

**Chart 1: Examples of Adult’s Rights Under State Law; Type of Statute<sup>1</sup>**

	Enumerated List (Bill of Rights)	Pre-Appointment Due Process Rights and Post-Appointment Rights	All Rights by Law Except Those Limited by Guardianship
Alaska			A.S. § 13.26.201.
Arkansas			Ark. Stat. § 28-65-106 (a).
Florida	Fla. Stat. § 744.3215(1).		
Idaho			I.C. § 66-405. (In a partial guardianship.)
Kentucky			K.R.S. § 387.590. (In a limited guardianship.)
Michigan		Mich. Stat. § 700.5306a(1).	Mich. Stat. § 330.1620. (In a partial guardianship.)
Minnesota	Minn. Stat. § 524.5-120.		
Missouri	Mo. Stat. § 475.361	<i>See also, Mo. Stat. § 475.075.</i>	
Montana			Mt. Stat. § 72-5-306.
Mississippi	Miss. Code Ann. § 93-20-310(2).		
Nevada	Nev. Stat. § 159.328		
New Mexico			N.M. Stat. § 45-5-301.1. (Guardianship, generally)  N.M. Stat. § 45-5-312. (In a limited guardianship.)
Oklahoma		30 Ok. Stat. § 3-106	
Oregon			Or. Stat. § 125.300(3).
South Carolina	S.C. Stat. § 62-5-304A.		
Texas			Tex. Estates § 1151.351.

<sup>1</sup> Chart prepared by Evangeline Stewart, May 2021 graduate, Stetson College of Law.

	Enumerated List (Bill of Rights)	Pre-Appointment Due Process Rights and Post-Appointment Rights	All Rights by Law Except Those Limited by Guardianship
Vermont		14 Vt. Stat. § 3068a	
Wisconsin		Wisc. Stat. § 54.42	
Wyoming	Wy. Stat. § 3-1-206		(also includes language re: “all other rights... residents of facilities...)
UGCOPAA	§ 311	§ 307	

### Examples of State Law Visitation Standards<sup>2</sup>

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian’s denial of visitation?	Other limits on guardian’s power over visitation
Alabama	Guardian  Ala. Stat. § 26-2A-108.	✓, relative may file petition to compel visitation.  Ala. Stat. § 26-2A-113.	
Arizona	Guardian  A.R.S. § 14-5316(A).	✓, person with significant relationship may petition, or ward may.  A.R.S. § 14-5316(D).	
Arkansas	Adult  Ark. Stat. § 28-65-106(b)(1)-(2).	✓, relative or those with significant relationship to adult with disability may petition the court for visitation order where reasonable, fact-supported belief exists that guardian is interfering.  Ark. Stat. § 28-65-110.	If the adult wishes visitation, doesn’t disagree to visitation or cannot express consent or disagreement with visitation, guardian has burden of proof to show visitation would

<sup>2</sup> Chart prepared by Evangeline Stewart, May 2021 graduate, Stetson College of Law.

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
			be in the adult's best interest.  Ark. Stat. § 28-65-110(b)(2).
California	Adult, or conservator can be given this power.  Cal. Prob. Code § 2351.  Limited conservator must have the power granted by the court:  Cal. Prob. Code § 2351.5.		
Florida	Adult  Fla. Stat. § 744.3215(1).	✓, any interested person. Fla. Stat. § 744.3715.	
Georgia	Adult, except as limited by court order  Ga. Code s. 29-4-20.	✓, adult  Ga. Code s. 29-4-20.	
Hawaii	Adult, but guardian can restrict if posing risk to safety/well-being of ward.  Hawaii Stat. s. 560:5-316(c).		
Illinois	Adult, if the court finds that the adult has capacity to make decisions regarding visitation.  Ill. St. 755 § 5/11a-17(g)(2).	✓, certain relatives may seek relief if the guardian "unreasonably prevents" the relative from visiting with the adult.  Ill. St. 755 § 5/11a-17(g)(2).	

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
Iowa	Adult, but guardian may place reasonable restrictions on visitation.  Iowa Stat. § 633.635(2)(i)		Guardian must show good cause for court order restricting visitation. Iowa Stat. § 633.635(3)(c).
Maine	Adult, unless guardian is authorized by the court/protective order/guardian believes there is good cause to limit contact to prevent harm.  18-C M.R.S.A. § 5-315.	✓, spouse, domestic partner, and adult children may object.  18-C M.R.S.A. § 5-315; 18-C M.R.S.A. § 5-310 (6).	
Maryland	Guardian, described as a duty to arrange visitation where in the adult's best interest.  MD Code, Estates and Trusts, § 13-708.		
Minnesota	Adult, but guardian may restrict to prevent risk of significant harm.  Minn. Stat. § 524.5-120 (10).	✓, adult or person restricted may petition to remove or modify the restrictions.  Minn. Stat. § 524.5-120(10).	
Mississippi	Adult, but guardian may restrict for a <u>limited</u> period to prevent risk of significant harm or limit contact where authorized by the court.  Miss. Code Ann. § 93-20-310(2).		
Nebraska (nursing home residents)	Nursing home  Neb. Rev. St. § 30-703.	✓, family members being denied visitation may petition to compel	No arbitrary prohibitions on family

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
		Neb. Rev. St. § 30-703.	petitioners visiting adult in facility.  Neb. Rev. St. § 30-703.
Nevada	Adult, limited by guardian and court restriction to prevent harm.  Nev. Rev. Stat. §159.328(1)(n).	✓, guardian, adult, adult's relative, or person of natural affection may.  Nev. Rev. Stat. §159.333.	
New Mexico	Adult, but guardian may limit where authorized by court order, guardian has good cause to believe restriction is necessary to prevent harm, or by use of less restrictive alternative limiting contact.  N.M.S.A. § 45-4-312(F).		Where guardian has good cause to believe restriction necessary to prevent harm, restrictions for family members or friends cannot be more than seven business days, or sixty days for non-family members/friends.  N.M.S.A. § 45-4-312(F).
Oregon	Adult, except where limited by guardian pursuant to court order/to avoid unreasonable harm to the adult.  Or. Stat. §125.323(2).	✓, any interested person may do so.  Or. Stat. §125.323(4).	
Rhode Island	Adult, unless restriction authorized by court or	✓, any interested person, including the adult.	Court order required before visitation can be

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
	<p>guardian can show good cause for restriction.</p> <p>R.I. § 33-15-18.1.</p>	<p>R.I. § 33-15-18.1(d)(1).</p>	<p>restricted.</p> <p>Guardian must show good cause as set forth in the statutes.</p> <p>R.I. § 33-15-18.1.</p> <p>Sanctions are available against guardian who intentionally isolates adult or violates court order.</p> <p>R.I. § 33-15-18.1(d)(2).</p>
<p>South Carolina</p>	<p>Guardian may be given this power.</p> <p>S.C. Stat. § 62-5-304A(B)(3)</p>		
<p>South Dakota</p>	<p>Adult, unless court gives authorization to guardian to restrict. Guardian must show good cause.</p> <p>S.D. Stat. § 29A-5-421; S.D. Stat. § 29A-5-423; S.D. Stat. § 29A-5-424.</p> <p>Consent or refusal to visit may be presumed by guardian for adults unable to give consent where person seeking visitation gives proof of relationship.</p> <p>S.D. Stat. § 29A-5-422.</p>		

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
Tennessee	<p>Adult, unless this power is explicitly given to the guardian.</p> <p>Tenn. Stat. § 34-3-107(a)(2)(P).</p> <p>Consent may be presumed where adult is unable to express consent to visitation due to mental or physical condition based on the adult's prior relationship with the person.</p> <p>Tenn. Stat. § 34-3-107(c)</p>		
Texas	<p>Adult, but guardian may limit to protect from substantial harm.</p> <p>Certain relatives also may petition the court for visitation.</p> <p>Tex. Estates § 1151.351(16).</p>	<p>✓, adult may request hearing to remove restrictions.</p> <p>Tex. Estates § 1151.351(16).</p>	
Utah	<p>Adult, where they have indicated they do not want to visit. Otherwise, court order required to restrict visitation. Where unable to consent, adult's consent presumed on presentation of evidence of prior relationship.</p> <p>Utah. Stat. § 75-5-312.5.</p>	<p>✓, adult, relative, or qualified acquaintance may petition to rescind/modify the order.</p> <p>Utah. Stat. § 75-5-312.5(5).</p>	<p>Guardian may not unreasonably restrict visitation.</p> <p>Utah. Stat. § 75-5-312.</p>
Virginia			<p>Guardian may not unreasonably restrict the</p>

	Who Determines Visitation? (guardian/adult)	Can one petition the guardian's denial of visitation?	Other limits on guardian's power over visitation
			adult's ability to visit.  VA Code Ann. § 64.2-2009(E)(2). (as part of orders appointing guardian)
Washington	Adult, unless court order or protective order exists to limit; or guardian has good cause to believe restriction is necessary to prevent immediate risk of harm or significant distress to the adult.  Wash. RCWA §11.92.195 (effective until January 1, 2022).		
West Virginia	Guardian.  W.Va. Code § 44A-3-1(a).  Relative may file petition seeking visitation with the adult.  W.Va. Code § 44A-3-17(b).		
UGCOPAA	§ 311, esp. (4)-(6); <i>see also</i> § 315(c)	Yes, § 311(5)-(6)	§ 315(c)-court order, protective order, good cause risk of harm