



Kinship Guardianship as a Permanency Option

Legal guardianship is a judicially created relationship between a child and responsible adult in which the guardian assumes many of the rights and responsibilities that customarily would reside with the child's parents. Traditionally, a guardian has been a person, usually a relative or close family friend, who has been named by the parent in his or her will to assume the care of the child after the parent's death or permanent disability. In addition to parental arrangements for guardianship, a court may appoint a guardian for a minor if the parent is unable or unwilling to provide appropriate care for his or her child or parental rights have been terminated.

A court also may appoint a relative or other kin as a permanent guardian when that person has been caring for the child as a foster parent. Kinship guardianship can be a permanency option for a child in the legal custody of a department of social services when reunification with the child's parents or permanency through adoption is not feasible. Guardianship creates a legal relationship between a child and caregiver that is intended to be permanent and self-sustaining and can provide a permanent family for the child without the necessity of terminating parental rights.

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<https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>.

Purpose of Guardianship

Permanent guardianship with a relative caregiver can provide a permanent home for a child in out-of-home care when efforts to reunite the child with his or her family have been unsuccessful and permanency through adoption is either not possible or not appropriate. For this publication, laws and policies were collected from all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. An analysis of the information collected indicates that approximately 45 States, the District of Columbia, Guam, and the Virgin Islands specifically provide in statute, regulation, or policy for guardianship with kin as a permanency option for children in out-of-home care.¹ Since guardianship usually does not require termination of parental rights, the child is able to maintain family connections while gaining the stability of a permanent home with a relative caregiver who has demonstrated a commitment to caring for the child throughout the child's minority.

Guardianship can be particularly suited to the permanency needs of an older child under the following circumstances:

- The child has been in a stable placement with the caregiver for a period of time.
- The child is unwilling to be adopted.
- Parental rights cannot be terminated.
- The child continues to benefit from the relationship with the birth family.
- The caregiver is able and willing to provide a permanent home for the child but is unwilling or unable to adopt the child.

¹ The word "approximately" is used to stress the fact that States frequently amend their laws. This information is current through July 2018. The States that provide for guardianship with kin include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. For more information on relative placement, see Child Welfare Information Gateway's *Placement of Children With Relatives* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/placement/>.

A Guardian's Rights and Responsibilities

A guardian is granted permanent care, custody, and control of the child and assumes many of the rights and duties that customarily would reside with the child's parents. Duties include providing the child with a safe, stable, and appropriate home; adequate food and clothing; education; and basic health, mental health, and dental care. Rights include the authority to consent to school enrollment and health and mental health services as well as to make decisions on behalf of the child.

In many States, the order of guardianship also will allow the guardian to provide consent for other major life events, such as the following:

- Marriage (in 25 States, the District of Columbia, American Samoa, Guam, and the Virgin Islands)²
- Enlistment in the armed forces (in 18 States, the District of Columbia, and American Samoa)³
- Major medical treatment, including surgery (in 21 States, the District of Columbia, American Samoa, Guam, and the Virgin Islands)⁴
- Adoption of the child (in 16 States, American Samoa, Guam, and the Virgin Islands)⁵

² Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Montana, New Hampshire, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin

³ Alaska, Connecticut, Delaware, Idaho, Illinois, Iowa, Louisiana, New Hampshire, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin

⁴ Alaska, Arkansas, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, New Hampshire, North Carolina, Oregon, South Carolina, Texas, Utah, Virginia, Wisconsin, and Wyoming

⁵ A guardian may consent to the child's adoption in Arizona, Georgia, Indiana, Iowa, Massachusetts, Michigan, Montana, New Hampshire, New York, and Oregon. In Illinois, Maine, and the Virgin Islands, a guardian may consent to the child's adoption only when the court expressly authorizes the guardian to provide consent. In Colorado, Idaho, North Dakota, Texas, and American Samoa, the guardian may consent to the child's adoption only when parental rights have been terminated.

Qualifying the Guardian

Guardianship will be considered as a permanent placement for the child only after the child has been living in the home of the prospective guardian for a period of time (usually 6 months), and the placement has been appropriate and stable. Guardianship homes generally must meet the same standards of any relative foster placement, including the completion of a home study that includes checks of State and Federal criminal records and child abuse and neglect registries. The study also includes a home inspection to ensure that the prospective guardian can provide the child with a safe and adequate home environment.⁶

Since guardianship is intended to be a permanent placement, a guardianship home study also shall determine whether the following conditions have been met:

- The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring permanently for the child.
- The prospective guardian is willing to provide a safe and permanent home for the child.
- The prospective guardian has demonstrated the ability to provide for the child's physical, mental, emotional, educational, and psychological needs without ongoing supervision of the child by the State child welfare agency, except for provision of assistance.
- The prospective guardian has established a nurturing, stable relationship with the child or (for a very young child) the child's family, and the child indicates, through words or nonverbal actions, a desire to continue a family relationship and residence with the guardian in the guardian's household.
- To the extent feasible, the child has been consulted regarding the guardianship.
- Permanent placement with a guardian is in the best interests of the child.

⁶ For more information on the home study process, see Information Gateway's *Home Study Requirements for Prospective Foster Parents* at <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/homestudyreqs/>.

Procedures for Establishing Guardianship

To establish a guardianship, a petition is filed with the court that has jurisdiction over the child's case by a parent, the State or county child welfare agency that has legal custody of the child, the prospective guardian, the child or his or her legal representative, or any other person with a legitimate interest in the case. The court will then schedule a hearing to review the petition.

At the hearing, the court will determine whether the proposed guardianship placement will provide the child with a suitable permanent home. The factors that go into that determination include the following:

- The home study shows that the prospective guardian's home is safe and can appropriately meet the child's needs.
- The results of criminal records and child abuse and neglect registry checks of the prospective guardian and all adult members of the prospective guardian's household reveal nothing that would pose a threat to the child's safety.
- The child is comfortable with the prospective guardian and members of the prospective guardian's household.
- The prospective guardian understands the permanent nature of a guardianship and has expressed a strong commitment to caring for the child throughout the child's minority.
- The child has been consulted regarding the guardianship and is in agreement with the guardianship placement.⁷

Once the court has determined that the prospective guardian's home is suitable for the child and that the placement will serve the child's best interests, it will appoint the person as the child's guardian.

⁷ Laws in 32 States, the District of Columbia, Guam, and the Virgin Islands specify the age at which the child may nominate his or her guardian and must agree to the guardianship placement. The child must be allowed to state his or her preference at age 14 in Alabama, Alaska, Arkansas, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Maine, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oregon, Rhode Island, Utah, Washington, Wyoming, the District of Columbia, and the Virgin Islands; at age 12 in Arizona, California, Colorado, Connecticut, Mississippi, Montana, New Jersey, Tennessee, Wisconsin, and Guam; and at age 10 in Nebraska.

Contents of a Guardianship Order

Upon appointing a person as guardian of a child, the court will issue an order of guardianship that grants the guardian the authority to make decisions on behalf of the child and provide the consents that are necessary to enroll the child in school and obtain health care and other services for the child. The granting of an order of guardianship also will transfer the child's placement and care responsibility from the State child welfare agency to the family, although the court, at its discretion, may retain jurisdiction over the case for a period of time.

Unless parental rights have been terminated, a guardianship order also may allow the parents visiting time with the child, as well as order the parent to pay child support. The parents also may retain the right to consent to the child's adoption and determine the child's religious affiliation. The child retains the right to inherit from his or her parents.

Modification or Revocation of Guardianship

A guardianship is intended to be permanent for the duration of the child's minority and will continue until the child dies, is adopted, marries, or reaches the age of majority.⁸ A guardianship also can be modified or revoked upon petition to the court and if the court finds that there has been a material change of circumstances such that modifying or revoking the order of guardianship is in the child's best interests.

Circumstances that can lead to modification or revocation of guardianship include the following:

- The guardian has died, become incapacitated, or found to be neglecting the child.

⁸ The age of majority, as defined by State statute, is the age at which a person is legally considered an adult. In most States, the age of majority is 18. In Alabama and Nebraska, the age of majority is age 19, and in Mississippi, the age of majority is 21. A State-by-State listing of age of majority statutes is available at <https://minors.uslegal.com/age-of-majority/>.

- The child's parents present evidence showing that the circumstances that led to the child's removal from their home have been sufficiently corrected and that they can resume custody of the child.
- The parents wish to modify the terms of contact or visiting time in the original guardianship order.

If the guardianship is revoked, the court can appoint a successor guardian, return the child to the child's parents, or transfer custody of the child to the State or county child welfare agency. The agency then will have responsibility to find a suitable placement for the child.

Kinship Guardianship Assistance

For prospective kinship guardians who meet the requirements to provide a suitable permanent home for the child in all respects except for the ability to assume complete financial responsibility for the child's care, States may provide an array of services and financial supports, including subsidies. These supports include kinship navigator services, federally funded subsidies through title IV-E, and State-funded subsidies.

Kinship Navigator Services

Kinship navigator programs assist prospective kinship guardians with information, referrals, and assistance with applying for available programs and services. Five States have defined their kinship navigator programs in statute.⁹ The types of services that may be provided include the following:

- Providing referrals to services that may be available from public, private, community, and faith-based organizations
- Determining the child's eligibility for financial support, including Social Security/Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF)
- Assisting the guardian in applying for SSI or TANF

⁹ Connecticut, Florida, Illinois, New Jersey, and Ohio

- Reimbursing the caregiver's legal fees and costs
- Providing health-care coverage for the child through Medicaid or another State health-care program
- Providing assistance to kinship caregivers in applying for a monthly subsidy payment

Kinship guardians who live in States that do not have kinship guardianship programs may still be eligible for Federal financial assistance, such as SSI, TANF, or Medicaid, on behalf of the child. They can apply for these benefits on their own or with the assistance of their caseworker.

Beginning in Federal Fiscal year 2019, title IV-E agencies can receive Federal funding for kinship navigator programs that meet certain criteria. To qualify for funding under the title IV-E Kinship Navigator program, the program implemented by a title IV-E agency must meet the requirements described in section 427(a)(1) [42 U.S.C. § 627(A)(1)] of the Social Security Act, including a kinship navigator program to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served.¹⁰ Many States are in the process of developing and expanding kinship navigator programs to assist prospective kinship guardians with information, referrals, and assistance with applying for available programs and services.

Title IV-E Kinship Guardianship Assistance

In States that offer kinship guardianship assistance, monthly subsidy payments may be federally funded through title IV-E or State funded. Thirty-five States¹¹ and the District of Columbia have been approved for a title IV-E Guardianship Assistance Program (GAP).

¹⁰ The Children's Bureau provides guidance on the requirements for participating in the Title IV-E Kinship Navigator Program in Program Instruction ACYF-CB-PI-18-11, issued November 30, 2018. The Program Instruction is available at <https://www.acf.hhs.gov/cb/resource/pi1811>.

¹¹ Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin

Under the program, a kinship guardian may be eligible to receive federally funded title IV-E kinship guardianship assistance¹² on behalf of an eligible child if all of the following conditions are met:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or a court order that continuation in the home would be contrary to the welfare of the child.
- The child is eligible for title IV-E foster care maintenance payments during at least a 6-consecutive month period when the child resided in the home of the prospective kinship guardian who was licensed or approved as a foster family home.
- The title IV-E agency is responsible for the placement and care of the child.
- The title IV-E agency determines that being returned home or being adopted are not appropriate permanent options for the child.
- The title IV-E agency determines that permanent placement with a kinship guardian is in the child's best interests.
- The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to permanently caring for the child.
- With respect to a child who is at least age 14, the child has been consulted regarding the kinship guardianship.
- The prospective kinship guardian has negotiated and entered into a written, binding kinship guardianship assistance agreement with the title IV-E agency, and the guardian has received a copy of the agreement, which must specify the following:
 - » The amount of and manner in which the kinship guardianship assistance payment will be provided to the prospective kinship guardian

¹² Public Law 110-351 added section 471(a)(28) [42 U.S.C. § 671(a)(28)] to the Social Security Act, creating a new title IV-E plan option for States and Tribes to provide kinship guardianship assistance payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. The law also added new section 473(d) [42 U.S.C. § 673(d)] of the act, which establishes eligibility and other requirements for the title IV-E GAP. For a description of the program, see <https://www.acf.hhs.gov/cb/resource/title-iv-e-guardianship-assistance>.

- » The manner in which the payment may be adjusted periodically, in consultation with the kinship guardian, based on the circumstances of the kinship guardian and the needs of the child
- » Additional services and assistance for which the child and kinship guardian will be eligible under the agreement
- » The procedure by which the kinship guardian may apply for additional services

A child continues to be eligible for title IV-E guardianship assistance payments and Medicaid regardless of State residency.

A State agency may make title IV-E guardianship assistance payments on behalf of a child who does not meet all of the eligibility requirements when the child is the sibling of an eligible child who is placed with the same relative under the same legal guardianship arrangement if the agency and the relative legal guardian agree that the placement is appropriate. Kinship guardianship assistance payments may be paid on behalf of each sibling placed with that legal guardian.

State Guardianship Assistance

In 33 States and the District of Columbia, the kinship guardian of a child who is not eligible for a title IV-E guardianship subsidy may be eligible to receive State-funded guardianship assistance payments on behalf of the child.¹³ Each State has its own criteria for these State-funded guardianship subsidy payments. A guardianship subsidy may be approved for a child for whom the guardianship would not be possible without financial aid and for whom the State's eligibility criteria have been met. The following are common guardianship subsidy criteria:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or court order.

¹³ Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming

- The child is residing with the prospective kinship guardian, and the prospective guardian's home meets the requirements for safety and appropriateness.
- If the placement is for an older child, he or she has been consulted regarding the proposed guardianship.
- The prospective guardian and the State child welfare agency have signed an agreement describing the negotiated terms and conditions of the subsidy prior to the issuance of the guardianship decree.

In nine States, subsidy payments may be made on behalf of a Native American child who has been placed in a guardianship home by the child's Tribe.¹⁴

For More Information

Many States have regulations and agency policies that detail the requirements for guardianship that have been made available on the internet. Some States also have online publications intended for family members who may be considering becoming guardians for relative children. Links to these resources for each State can be found in this publication.

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

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¹⁴ Alabama, Maine, Minnesota, Montana, Oregon, Pennsylvania, Utah, Washington, and Wisconsin

Alabama

Current Through July 2018

Definitions

Citation: Ann. Code § 38-12-32

The following terms shall have the following meanings:

- A 'caregiver' is an individual age 21 or older, other than a child's parent, legal guardian, or legal custodian, who is an approved foster parent and a relative of the child and who has been providing care and support for the child while the child has been residing in the caregiver's home for at least the last 6 consecutive months while in the legal custody of the Department of Human Resources, a designated official for a child-placing agency, or a successor guardian.
- A 'kinship guardian' is a caregiver who is willing to assume care of a child because of the incapacity of a parent, legal guardian, legal custodian, or other dependency reason, with the intent to raise the child to adulthood, and who is appointed the kinship guardian of the child by a juvenile court. A kinship guardian shall be responsible for the care and protection of the child and also for providing for the health, education, and maintenance of the child.
- A 'relative' is an individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great-grandparent, great-aunt, great-uncle, great-great-grandparent, niece, nephew, grandniece, grandnephew, or a stepparent.

Purpose of Guardianship

Citation: Ann. Code § 38-12-31

The legislature finds and declares that:

- An increasing number of relatives, including grandparents, are willing to provide care to related children on a long-term basis to prevent the children from remaining in foster care with unrelated caregivers, yet are either unable or unwilling to seek termination of the legal relationships between the parent and the child, particularly when it is the relative's own child or sibling who is the parent.
- It is in the public interest to create a new type of legal guardianship that addresses the needs of children in the legal custody of the department and to establish long-term legal relationships with relatives and to place children out of the foster care system.

The purposes of kinship guardianships include the following:

- Establish procedures to effect a legal relationship between a child in the legal custody of the department and a kinship guardian and to terminate legal custody with the department
- Provide a child in the legal custody of the department with a stable and consistent long-term relationship with a kinship guardian when the parents, legal guardians, or legal custodians of the child are not willing or able to do so
- Establish a permanent placement alternative to a child remaining in the legal custody of the department under court supervision when the child cannot be reunited with the parent, and other persons are not interested in pursuing adoption
- Establish a new legal relationship that is permanent during the minority of the child and not subject to modification or revocation merely for a material change in circumstances that has occurred since the order granting the kinship guardianship was entered

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 38-12-4

The department and the kinship foster parent shall develop an individualized service plan for the foster care of the child. The plan shall be periodically reviewed and updated. If the plan includes the use of an approved child care center or family child care home, the department shall pay for child care arrangements, according to established rates.

The kinship foster parent shall cooperate with any activities specified in the individualized service plan for the foster child, such as counseling, therapy, court sessions, or visits with the foster child's parents or other family members.

Qualifying the Guardian

Citation: Ann. Code §§ 38-12-2; 38-12-3; 38-12-4

The department shall establish standards for becoming a kinship foster parent as follows:

- A relative shall be an individual who is legally related to the child by blood, marriage, or adoption within the fourth degree of kinship, including only a brother, sister, uncle, aunt, first cousin, grandparent, great-grandparent, great-aunt, great-uncle, great-great-grandparent, niece, nephew, grandniece, grandnephew, or a stepparent.
- The kinship foster parent shall be age 21 or older, unless the department provides otherwise by rule to carry out the provisions of this chapter.
- The department may waive standards for kinship foster care as provided by department rule and as permitted by other State and Federal law.

A person may become a kinship foster parent only upon the completion of an investigation to determine whether there is a State or Federal record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective foster parent's home.

The Alabama Bureau of Investigation shall conduct the investigation and shall make the results of the investigation available to the department in accordance with this section.

The department shall determine whether the person is able to care effectively for the foster child by the following methods:

- Reviewing personal and professional references
- Observing during a home visit the kinship foster parent with household members
- Interviewing the kinship foster parent

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 38-12-2; 38-12-4; 12-15-315

When a child has been removed from his or her home and is in the care, custody, or guardianship of the department, the department shall attempt to place the child with a relative for kinship foster care. If the relative is approved by the department to provide foster care services, in accordance with rules and regulations adopted by the department, and a placement with the relative is made, the relative may receive payment for the full foster care rate only as provided by Federal law for the care of the child. The relative also may receive any other benefits that might be available to foster parents, whether in money or in services. Foster care payments shall cease upon the effective date of the kinship subsidy payments or as provided by the department.

The appointment of the kinship guardian is made by the juvenile court.

At the permanency hearing the court shall determine the permanency plan for the child. The plan may include permanent placement with a kinship guardian pursuant to a written request filed by the department for the appointment of an individual as a kinship guardian.

Contents of a Guardianship Order

Citation: Ann. Code § 12-15-315

The request for appointment of a kinship guardian shall contain the following:

- Granting kinship guardianship to the relative caregiver is in the best interests of the child.
- Granting a kinship guardianship of the child to the relative caregiver will provide the child with a safe and permanent home.
- The child demonstrates a strong attachment to the relative caregiver and the relative caregiver demonstrates a strong commitment to caring permanently for the child.
- The relative caregiver has been approved as a foster parent by the department and has completed criminal history and child abuse and neglect central registry clearances.
- The child has been in the care of the relative caregiver for no less than 6 consecutive months.
- A child who is age 14 or older has been consulted as to his or her position regarding the prospective kinship guardianship and, if the child is age 18 or older, he or she has consented to the kinship guardianship.

If the permanency plan for a child is placement with a kinship guardian, the service plan must contain the following:

- The steps that the department has taken to determine that it is not appropriate for the child to be returned home or adopted
- The reasons for any separation of siblings during placement
- The reasons why a permanent placement with a fit and willing relative caregiver through a kinship guardianship arrangement is in the best interests of the child
- The ways in which the child meets the eligibility requirements for the kinship guardianship program
- The efforts the department has made to discuss adoption by the relative foster parent as a more permanent alternative to a kinship guardianship, and why the relative foster parent has chosen not to pursue adoption
- The efforts made by the department to discuss kinship guardianship with the parent, legal guardian, or legal custodian of the child, or why the efforts were not made

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Ann. Code § 38-12-34

The department may provide subsidies for an eligible child placed in kinship guardianship by a court or by a federally recognized Native American Indian Tribe, if the child would not be placed in a kinship guardianship without the assistance of the program.

A child is eligible for a kinship guardianship subsidy if the department determines the following:

- The child has been removed from the custody of his or her parent or parents, legal guardian, or legal custodian as a result of a judicial determination to the effect that continuation in the custody of the parent or parents, legal guardian, or legal custodian would be contrary to the welfare of the child.
- The department is responsible for the placement and care of the child.
- Being returned home or being adopted are not appropriate permanent placement options for the child.
- Permanent placement with a kinship guardian is in the child's best interests.
- The child demonstrates a strong attachment to the prospective kinship guardian and the kinship guardian has a strong commitment to caring permanently for the child.
- The child has received foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective kinship guardian.
- With respect to a child who is at least age 14, the child has been consulted regarding the kinship guardianship.
- If required for Federal funding participation, the kinship guardian is qualified pursuant to a means-based test and any other requirements.
- If required for Federal funding participation, the necessary degree of relationship exists between the prospective kinship guardian and the child.

Links to Agency Policies

Kinship guardianship is not addressed in the regulations and agency policies reviewed.

Alaska

Current Through July 2018

Definitions

Citation: Admin. Code Tit. 7, § 53.299

A 'legal guardian' means the caregiver in a judicially created relationship between child and caregiver that is intended to be permanent and self-sustaining.

A 'relative guardian' means a guardian or prospective guardian who is related to a child by blood, marriage, fictive kin, or Tribal custom. For purposes of this paragraph, 'fictive kin' means an individual who is unrelated to the child by birth or marriage but has an emotionally significant relationship with a child that has the characteristics of a family relationship.

Purpose of Guardianship

Citation: CPS Manual § 3.12

Guardianship is an option for providing a permanent home for children younger than age 18 in the custody of the Department of Health and Social Services who cannot be reunified with their parents and for whom adoption is not the most appropriate permanency goal.

A Guardian's Rights and Responsibilities

Citation: Alaska Stat. § 47.10.084(b); Admin. Code Tit. 7, § 53.299

The rights and responsibilities may include, but are not limited to, having the right and responsibility of reasonable visitation, consenting to marriage, consenting to military enlistment, consenting to major medical treatment, obtaining representation for the child in legal actions, and making decisions of legal or financial significance concerning the child.

In regulation: A legal guardianship transfers to the caregiver each of the following parental rights with respect to the child:

- Protection
- Education
- Care and control of the person
- Custody of the person
- Decision-making

Qualifying the Guardian

Citation: Alaska Stat. § 47.14.100(j), (m); Admin. Code Tit. 7, §§ 56.660; 50.055

To determine whether the home of a relative meets the requirements for placement of a child, the department shall conduct fingerprint-based State and national criminal background checks on all members of the relative's household who are age 16 or older when the relative requests placement of the child.

Good cause not to place a child with an adult family member or family friend includes the failure to meet the requirements for a foster care license, taking into account any allowable waiver, variance, or exemption. Good cause not to place a child with an adult family member or family friend does not include poverty or inadequate or crowded housing.

In regulation: An agency shall conduct a home study for all applicants in the family being considered as a guardianship home. The home study must include the following:

- One face-to-face interview with all persons living in the home
- One onsite home visit
- An assessment of the capabilities and willingness of the applicant to properly parent the child

The agency shall request a child protection and licensing clearance from the department for each adult member of the household. The agency may and the division will, in its discretion, require that a person residing in an applicant household provide an evaluation from a probation, health, or mental health professional affirming that the person is free from problems that can be detrimental to the health, safety, or well-being of a child. In addition, the agency shall obtain at least three positive written references on the applicant, at least two of which are from persons unrelated to the applicant.

In evaluating a relative applicant, the agency will discuss with the applicant and document any recommended variance from a requirement. The supervisor will review the evaluation to ensure the health, safety, and well-being of the child is protected.

Procedures for Establishing Guardianship

Citation: Alaska Stat. § 47.10.110; CPS Manual § 3.12

When, in the course of a Child In Need of Aid proceeding under this chapter, it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian or custodian of the minor's person, the court may make the appointment. The court shall have a summons issued and served upon the parents of the minor, if they can be found, in a manner and within a time before the hearing that the court considers reasonable. The court may determine whether the father, mother, another suitable person, or the department shall have the custody and control of the minor. If the minor is of sufficient age and intelligence to state desires, the court shall consider them.

In policy: The prospective guardian must:

- Have cared for the child a minimum of 6 months or have previously cared for the child for at least 6 months
- Agree to assume guardianship duties and responsibilities and provide a stable home for the child until he or she reaches age 18
- Receive an approved guardianship home study

Contents of a Guardianship Order

Citation: Alaska Stat. § 47.10.084

When a guardian is appointed for the child, the court shall specify in its order the rights and responsibilities of the guardian.

When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation; consent to adoption; consent to marriage; consent to military enlistment; consent to major medical treatment, except in cases of emergency or cases falling under § 25.20.025; and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian.

Modification/Revocation of Guardianship

Citation: Alaska Stat. §§ 47.10.084(b); 13.26.075

The guardian may be removed only by court order.

A guardian's authority and responsibility terminate upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority. However, termination does not affect the guardian's liability for prior acts, nor the obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

Kinship Guardianship Assistance

Citation: Admin. Code Tit. 7, §§ 53.226; 53.227

A child in department custody is eligible for title IV-E relative guardianship assistance if:

- The child has been removed from the home of his or her parent and is eligible for title IV-E foster care maintenance payments for at least 6 consecutive months during which the child resided in the home of the prospective relative guardian.
- Being returned to the home of his or her parent or being adopted is not an appropriate permanency option for the child.
- The prospective guardian is a relative of the child.
- The prospective guardian's home is licensed as a foster home in compliance with applicable requirements, including having a valid background check, and meets the applicable Federal requirements for receiving foster care maintenance payments for the care of a child who is eligible for title IV-E foster care.
- The child demonstrates a strong attachment to the prospective relative guardian, and that guardian has a strong commitment to providing permanent care for the child.
- For a child who is at least age 14, the child has been consulted regarding the guardianship arrangement.
- The prospective guardian has signed a title IV-E relative guardianship subsidy agreement.

A hard-to-place child with special needs who is in department custody and is not eligible for title IV-E adoption assistance is eligible for a State guardianship subsidy.

The department may determine, on a case-by-case basis, that a hard-to-place child with special needs who is not in department custody, and is not eligible for title IV-E adoption assistance is eligible for a State adoption or guardianship subsidy because of a hardship situation, including any of the following:

- A sibling of the child has already been adopted by, or made a ward of, the family.
- The family has highly specialized skills to meet the child's needs, and the lack of a subsidy would prevent the adoption or guardianship.

Links to Agency Policies

[Child Protective Services Manual](#) (PDF - 5,631 KB), see section 3.12

[Alaska Resource Family Handbook](#) (PDF - 2, 295 KB), see chapter 10

American Samoa

Current Through July 2018

Definitions

Kinship guardianship is not defined in the statutes reviewed.

Purpose of Guardianship

Citation: Ann. Code § 45.0103(18)

The court may transfer legal custody from a parent to a guardian. The term 'legal custody' means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. Legal custody may be taken from a parent only by court action.

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 45.0103(16)

The term 'guardianship of the person' means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to:

- The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment
- The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child
- The authority to consent to the adoption of a child when parental rights have been terminated by judicial decree
- The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution

Qualifying the Guardian

This issue is not addressed in the statutes reviewed.

Procedures for Establishing Guardianship

Citation: Ann. Code § 45.0432(a)

Notwithstanding any other section of law, in appropriate cases serving the best interests of a child, the court may appoint a qualified person as the child's guardian with such powers and custodial duties as set forth under § 45.0103 (16) and (18), or either, as the court may order.

Contents of a Guardianship Order

This issue is not addressed in the statutes reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Code § 45.0432(a), (c)

Guardianships established under this section continue until either the child reaches the age of majority or earlier termination by the court after a hearing conducted with due notice to all interested parties. An interested party may at any time, with cause, petition the court to terminate the guardianship.

The court may conduct periodic hearings on its own motion to review and monitor a guardianship authorized under this section.

Kinship Guardianship Assistance

This issue is not addressed in the statutes reviewed.

Links to Agency Policies

Kinship guardianship is not addressed in the regulations reviewed.

Arizona

Current Through July 2018

Definitions

Citation: Rev. Stat. § 8-501

The term 'relative' means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle, or first cousin.

Purpose of Guardianship

Citation: Rev. Stat. § 8-871; Pol. & Proc. Man. Ch. 5, § 29

The court may establish a permanent guardianship between a child and the guardian if the prospective guardianship is in the child's best interests and all of the following apply:

- The child has been adjudicated a dependent child or is the subject of a pending dependency petition filed by the Department of Child Safety.
- The child has been in the custody of the prospective permanent guardian for at least 9 months. The court may waive this requirement for good cause.
- If the child is in the custody of the department or agency, the department or agency has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds one or more of the following:
 - » Reunification efforts are not required by law.
 - » Reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child.
 - » The child is the subject of a pending dependency petition and there has been no adjudication of dependency.
- The likelihood that the child would be adopted is remote, or termination of parental rights would not be in the child's best interests.

In policy: The department shall consider recommending a permanency plan of guardianship when the prospective permanent guardian has made a commitment to provide care and support to the child, and guardianship is in the child's best interests.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. §§ 8-871; 14-5209(A), (C)

Unless otherwise set forth in the final order of permanent guardianship, a permanent guardian is vested with all of the rights and responsibilities set forth in § 14-5209 relating to the powers and duties of a guardian of a minor, other than those rights and responsibilities of the birth or adoptive parent, if any, that are set forth in the decree of permanent guardianship.

A guardian of a minor has the powers and responsibilities of a custodial parent regarding the ward's support, care, and education. A guardian is not personally liable for the ward's expenses and is not liable to third persons by reason of the relationship for acts of the ward.

A guardian may:

- Receive monies payable for the support of the ward under the terms of any statutory benefit, insurance system, private contract, devise, trust, conservatorship, or custodianship
- Take custody of the ward and establish the ward's place of residence in or outside this State, if consistent with the terms of an order of a court of competent jurisdiction relating to the detention or commitment of the ward
- Facilitate the ward's education, social, or other activities, and consent to medical or other professional care, treatment, or advice for the ward
- Consent to the marriage or adoption of the ward
- If reasonable, delegate to the ward certain responsibilities for decisions affecting the ward's well-being

Qualifying the Guardian

Citation: Rev. Stat. §§ 8-871; 8-872

The court may consider any adult, including a relative or foster parent, as a permanent guardian. The court may appoint a person nominated by the child if the child is at least age 12, unless the court finds that the appointment would not be in the child's best interests. The court shall consider the child's objection to the appointment of the person nominated as permanent guardian. In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental, and emotional needs and safety of the child.

Before a final hearing, the department, the agency, or a person designated as an officer of the court shall conduct an investigation addressing the factors set forth in § 8-871, whether the prospective permanent guardian or guardians are fit and proper persons to become permanent guardians, and whether the best interests of the child would be served by granting the permanent guardianship. The findings of this investigation shall be set forth in a written report provided to the court and all parties before the hearing. The court may require additional investigation if it finds that the welfare of the child will be served or if additional information is necessary to make an appropriate decision regarding the permanent guardianship.

Before the court may appoint a guardian, the court shall require the prospective guardian to furnish either a valid fingerprint clearance card or a full set of fingerprints to enable the court to determine the applicant's suitability as guardian. If the prospective guardian does not submit a valid fingerprint clearance card, the prospective guardian shall submit a full set of fingerprints to the court for the purpose of obtaining a State and Federal criminal records check. The Department of Public Safety may exchange this fingerprint data with the Federal Bureau of Investigation.

Procedures for Establishing Guardianship

Citation: Rev. Stat. § 8-872

Any party to a dependency proceeding may file a motion for permanent guardianship. The person who files the motion shall serve notice of the hearing and a copy of the motion on all parties, including any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement. The person who files the motion shall provide a copy of the notice of hearing to the following persons:

- The child's current physical custodian
- Any foster parent with whom the child has resided within the 6 months before the date of the hearing
- The prospective guardian if the guardian is not the current physical custodian
- Any other person the court orders to be provided notice

The person who files the motion has the burden of proof by clear and convincing evidence. In any proceeding involving a child who is subject to the Federal Indian Child Welfare Act, the person who files the motion has the burden of proof by beyond a reasonable doubt.

On the entry of the order establishing a permanent guardianship, the dependency action shall be dismissed. If the child was in the legal custody of the department during the dependency, the court may order the department to conduct the investigation and prepare the report for the first report and review hearing. The court shall retain jurisdiction to enforce its final order of permanent guardianship. The court shall require a report and review hearing to be held within 1 year following the entry of the final order and may set such other and further proceedings as may be in the best interests of the child. Before a report and review hearing, the court may require an investigation to be conducted of the facts and circumstances surrounding the welfare and best interests of the child and a written report to be filed with the court.

Contents of a Guardianship Order

Citation: Rev. Stat. § 8-872

A court order vesting permanent guardianship with an individual divests the birth or adoptive parent of legal custody of or guardianship for the child but does not terminate the parent's rights. A court order for permanent guardianship does not affect the child's inheritance rights from and through the child's birth or adoptive parents.

On finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings, or other relatives of the child if this order would be in the child's best interests. The order also may include any other provision that is necessary to rehabilitate the child or to provide for the child's continuing safety and well-being. The court may order a parent to contribute to the support of the child to the extent it finds the parent is able.

Modification/Revocation of Guardianship

Citation: Rev. Stat. §§ 8-873; 14-5209

The child, a parent of the child, the guardian of the child, or any party to the dependency proceeding may file a petition for the revocation of an order granting permanent guardianship if there is a significant change of circumstances, including the following:

- The child's parent is able and willing to properly care for the child.
- The child's permanent guardian is unable to properly care for the child.

The court shall appoint a guardian ad litem for the child in any proceeding for the revocation of permanent guardianship.

The court may revoke the order granting permanent guardianship if the party petitioning for revocation proves a change of circumstances by clear and convincing evidence and the revocation is in the child's best interests.

In the interest of developing self-reliance on the part of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may create a limited guardianship by limiting the powers of a guardian otherwise conferred by this section. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters.

Kinship Guardianship Assistance

Citation: Rev. Stat. § 8-814; Pol. & Proc. Man. Ch. 5, § 31

The department may provide a subsidy to guardian on behalf of a child subject to the requirements of this section. The department shall determine the appropriate amount of the subsidy, which shall not exceed the maintenance payment allowable for an adoption subsidy. The amount of the subsidy shall be offset by benefits received from other State or Federal programs to which the child is entitled.

The department shall discontinue a subsidy if any of the following occurs:

- The permanent guardianship terminates.
- The child dies or does not reside with the permanent guardian.
- The child reaches age 18, except that the department may continue the subsidy until the child's 22nd birthday if the child is enrolled in and regularly attending school and has not received a high school diploma or certificate of equivalency.
- The guardian fails to comply with any requirement in this section.

In policy: A permanent guardian is eligible for guardianship subsidy if permanent guardianship was granted on or after August 6, 1999, and applications for other State and Federal benefits have been made on behalf of the child by the guardian.

The guardianship subsidy program supports permanent placements for children who achieve permanency through permanent guardianship. The guardianship subsidy is intended to be only a partial reimbursement for expenses involved in the care of the child.

Links to Agency Policies

Division of Child Safety and Family Services, [Policy & Procedure Manual](#), see chapter 5, § 28, et seq., Guardianship.

Arkansas

Current Through July 2018

Definitions

Citation: Ann. Code §§ 9-27-303; 9-28-108

A 'custodian' is a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order. The term 'custodian' includes a person to whom a court of competent jurisdiction has given custody, including a legal guardian.

A 'guardian' is any person, agency, or institution, as defined by § 28-65-101, et seq., whom a court of competent jurisdiction has so appointed.

'Permanent custody' means custody that is transferred to a person as a permanency disposition in a juvenile case and the case is closed.

'Fictive kin' means a person selected by the Division of Children and Family Services who is not related to a child by blood or marriage and has a strong, positive, and emotional tie or role in the child's life or the child's parent's life, if the child is an infant.

'Relative' means a person within the fifth degree of kinship by virtue of blood or adoption.

From *A Relative's Guide to the Arkansas Child Welfare System*:

- 'Guardianship': Granted by the court, legal guardianship is a legal, permanent connection for the child, although not as permanent as adoption; no further court hearings are required. For a legal guardianship, the Department of Human Services will conduct an annual review of the family's and child's circumstances, and an annual report to the court must be filed.
- 'Permanent custody': Granted by the court, permanent custody requires no further services or periodic reviews. The case will be closed and the family will not receive support from the department. This is different from legal guardianship as the relative will not qualify for a subsidy and the department does not file an annual report with the court.

Purpose of Guardianship

Citation: Ann. Code § 9-28-1003; Admin. Code 016 00 CARR 011, Policy VI-B

A child in foster care shall be entitled to be placed in the custody or foster home of relatives, if appropriate, provided the relative caregiver meets all relevant child protection standards.

In regulation: In all custodial placements by the department in foster care or adoption, preferential consideration shall be given to an adult relative over a nonrelated caregiver if the relative caregiver meets all relevant child protection standards and it is in the best interests of the child to be placed with the relative caregiver. If there are no available and/or appropriate relatives within the fifth degree of kinship to the child, then the department shall attempt to identify appropriate fictive kin, to include people beyond the fifth degree of kinship by virtue of blood or adoption, as a placement option for the child.

Relatives and fictive kin have the option of obtaining permanent custody or guardianship if all efforts toward reunification are exhausted and/or to achieve case plan goals for permanency. If the court grants permanent custody, or guardianship is granted, the protective services case will be closed.

Guardian's Rights and Responsibilities

Citation: Ann. Code § 9-27-353

It shall be the duty of any person or agency appointed as the custodian of any child to care for and maintain the child. The custodian must ensure that the child is protected, properly trained and educated, and has the opportunity to learn a trade, occupation, or profession.

The custodian of a child has the right to obtain medical care for the child, including giving consent to specific medical, dental, or mental health treatments and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency, inpatient, or outpatient basis.

If there is an open dependency-neglect proceeding, the custodian shall not make any of the following decisions without receiving express court approval:

- Consent to the removal of bodily organs, unless the procedure is necessary to save the life of the child
- Consent to withhold life-saving or life-sustaining treatments
- Consent to the amputation of any body part, unless the procedure is necessary in an emergency to save the life of the child

The custodian has the right:

- To enroll the child in school upon the presentation of an order of custody
- To obtain medical and school records of any child in his or her custody upon presentation of an order of custody
- To consent to the child's travel on vacation or similar trips

It shall be the duty of every person granted custody, guardianship, or adoption of any child in a proceeding arising out of a dependency-neglect action to ensure that the child is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision, or custody of the child.

Qualifying the Guardian

Citation: Ann. Code §§ 9-8-204; 9-27-303(29)

A relative may be appointed guardian of a child when the department determines the following:

- The child has been removed from the custody of his or her parent or parents as a result of a judicial determination to the effect that continuation in the custody of the parent or parents would be contrary to the welfare of the child.
- Being returned home or being adopted is not an appropriate permanency option for the child.
- Permanent placement with a guardian is in the best interests of the child.
- The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring permanently for the child.
- With respect to a child who has reached age 14, the child has been consulted regarding the guardianship.
- The necessary degree of relationship exists between the prospective guardian and the child.
- The home of the prospective guardian complies with any applicable rules for foster home approval.
- The child has resided in the home of the prospective relative guardian for at least 6 consecutive months after the prospective guardian's home was opened as a foster home.

A home study is a written report that presents the findings of the investigation of a home by the department. An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within 30 days of the receipt of the request for the home study. The results of the criminal records check shall be provided to the court as soon as they are received. The department may obtain a criminal background check on any person in the household age 16 and older, including a fingerprint-based check of national crime information databases.

Procedures for Establishing Guardianship

Citation: Ann. Code § 9-28-108; Admin. Code 016 00 CARR 011, Policy VI-B & VIII-L

If a relative or other person inquires about the placement of a child in his or her home, the department shall discuss with the relative or other person about becoming a department foster home or obtaining legal custody of the child. The court may grant custody of the child to the relative or fictive kin after an approved written home study is presented to the court.

In regulation: If the relative or fictive kin chooses to obtain legal custody of the juvenile, a protective services case must be opened on the child and a case plan developed to establish permanency for the child. The department must provide services similar to the services that would have been provided if the child was placed in foster care, and the case plan must address these services.

If it is determined at the permanency-planning hearing that a guardianship arrangement with relatives is in the child's best interests, the child's permanency goal is changed to legal guardianship. When it is in the best interests of each of the children, the department shall attempt to place siblings together in the same guardianship arrangement. Siblings may be related by biological, marital, or legal ties.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Ann. Code § 9-8-204

A child is eligible for a guardianship subsidy if the Department of Human Services determines the following:

- The child has been removed from the custody of his or her parent(s) as a result of a judicial determination to the effect that continuation in the custody of the parent(s) would be contrary to the welfare of the child.
- The department is responsible for the placement and care of the child.
- Being returned home or being adopted is not an appropriate permanency option for the child.
- Permanent placement with a guardian is in the best interests of the child.
- The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring permanently for the child.

- With respect to a child who has reached age 14, the child has been consulted regarding the guardianship.
- The necessary degree of relationship exists between the prospective guardian and the child.
- The child is eligible for title IV-E foster care maintenance payments, or the department determines that adequate funding is available for the guardianship subsidy for a child who is not title IV-E eligible.
- The home of the prospective guardian complies with any applicable rules for foster home approval.
- While in the custody of the department, the child resided in the home of the prospective relative guardian for at least 6 consecutive months after the prospective guardian's home was opened as a foster home.

Links to Agency Policies

[A Relative's Guide to the Arkansas Child Welfare System](#) (PDF - 912 KB)

California

Current Through July 2018

Definitions

Citation: Wel. & Inst. Code §§ 361.5(g); 11391(c)

The term 'relative' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of those persons even if the marriage was terminated by death or dissolution. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, 'relative' as used in this section has the same meaning as 'relative' as defined in § 11391(c).

In § 11391(c), the term 'relative,' subject to Federal approval of amendments to the State plan, means any of the following:

- An adult who is related to the child, as defined above
- An adult who meets the definition of an approved, nonrelated, extended family member, as described in § 362.7
- An adult who is either a member of the Indian child's Tribe or an Indian custodian, as defined in § 1903(6) of Title 25 of the United States Code
- An adult who is the current foster parent of a child and who has established a significant and familylike relationship with the child and the child and the county child welfare agency, probation department, Indian Tribe, consortium of Tribes, or Tribal organization identify this adult as the child's permanent connection

Purpose of Guardianship

Citation: Wel. & Inst. Code § 366.26

The court shall not terminate parental rights if:

- The child is living with a relative who is unable or unwilling to adopt the child for reasons that do not include an unwillingness to accept legal or financial responsibility for the child but otherwise is willing and capable of providing the child with a stable and permanent home, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child.
- The court determines that termination would be detrimental to the child due to one or more of the following:
 - » The parents have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
 - » A child 12 years of age or older objects.
 - » The child is in a residential treatment facility, adoption is unlikely, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
 - » The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child but who is willing and capable of providing the child with a stable and permanent home.
 - » There would be substantial interference with a child's sibling relationship, and ongoing contact is in the child's best interests, including the child's long-term emotional interest, as compared with the benefit of legal permanence through adoption.

- » The child is an Indian child and there is a compelling reason for not terminating parental rights, including:
 - Terminating parental rights would substantially interfere with the child's connection to his or her Tribal community or the child's Tribal membership rights.
 - The child's Tribe has identified guardianship, long-term foster care with a fit and willing relative, Tribal customary adoption, or another planned permanent living arrangement for the child.

A Guardian's Rights and Responsibilities

Citation: Wel. & Inst. Code § 361.3

The relative must be able to do the following:

- Provide a safe, secure, and stable environment for the child
- Exercise proper and effective care and control of the child
- Provide a home and the necessities of life for the child
- Protect the child from his or her parents
- Facilitate court-ordered reunification efforts with the parents
- Facilitate visitation with the child's other relatives
- Facilitate implementation of all elements of the case plan
- Provide legal permanence for the child if reunification fails
- Arrange for appropriate and safe child care, as necessary

Qualifying the Guardian

Citation: Wel. & Inst. Code § 361.5(g)

The State Department of Social Services shall prepare an assessment that shall include the following:

- A review of the amount of and nature of any contact between the child and his or her parents and other members of his or her extended family since the time of placement
- An evaluation of the child's medical, developmental, scholastic, mental, and emotional status
- A preliminary assessment of the eligibility and commitment of any identified prospective guardian, including a social history screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of guardianship
- The relationship of the child to any identified prospective guardian, the duration and character of the relationship, the degree of attachment of the child to the prospective relative guardian, the relative's strong commitment to caring permanently for the child, and the motivation for seeking guardianship
- A statement from the child concerning placement and the guardianship
- Whether the child over age 12 has been consulted about the proposed relative guardianship arrangements, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response

For the purpose of this paragraph, the term 'extended family' includes, but is not limited to, the child's siblings, grandparents, aunts, and uncles.

Procedures for Establishing Guardianship

Citation: Wel. & Inst. Code §§ 360; 366.26

If the court finds that the child is a dependent child under § 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interests of the child. The parent and the child must agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court.

No person shall be appointed a legal guardian under this section until an assessment as specified in § 361.5(g) is read and considered by the court and reflected in the minutes of the court.

The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to §§ 361.5(g), 366.21(i), 366.22(b), and 366.25(b) shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

Contents of a Guardianship Order

Citation: Wel. & Inst. Code § 366.3

Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by § 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 6 months, the court shall, except if the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship.

Modification/Revocation of Guardianship

Citation: Wel. & Inst. Code § 366.3

If a guardianship is revoked, the department shall notify the juvenile court of this fact. Proceedings to terminate a legal guardianship shall be held either in the juvenile court that retains jurisdiction over the guardianship or the court in the county where the guardian and child currently reside, based on the best interests of the child, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship, the court shall order the department to prepare a report that shall include an evaluation of whether the child could safely remain in, or be returned to, the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian.

If the petition to terminate legal guardianship is granted, the court may resume dependency jurisdiction over the child and may order the department to develop a new permanency plan.

Unless the parental rights of the child's parents have been terminated, they shall be notified that the guardianship has been terminated and shall be entitled to participate in the new permanency-planning hearing. At the hearing, the parents may be considered as custodians, but the child shall not be returned to the parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parents.

If, following the establishment of a legal guardianship, the department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction and order that a hearing be held to determine whether adoption or continued legal guardianship is the most appropriate plan for the child.

Kinship Guardianship Assistance

Citation: Wel. & Inst. Code §§ 360; 11386

If the court appoints an approved relative caregiver as the child's legal guardian, the child has been in the care of that approved relative for a period of 6 consecutive months under a voluntary placement agreement, and the child otherwise meets the conditions for Federal financial participation, the child shall be eligible for aid under the Kin-GAP Program. The non-federally eligible child placed with an approved relative caregiver who is appointed as the child's legal guardian shall be eligible for aid under the State-funded Kin-GAP Program.

Aid shall be provided on behalf of a child under age 18 under all of the following conditions:

- The child satisfies both of the following requirements:
 - » He or she has been removed from his or her home pursuant to a voluntary placement agreement or as a result of judicial determination, including being adjudged a dependent child of the court, to the effect that continuation in the home would be contrary to the welfare of the child.
 - » He or she has been eligible for Federal foster care maintenance payments while residing in the approved home of the prospective relative guardian for at least 6 consecutive months.

- Being returned to the parental home or being adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the relative guardian, and the relative guardian has a strong commitment to caring permanently for the child and, with respect to the child who is age 12 or older, the child has been consulted regarding the kinship guardianship arrangement.
- The child has had a kinship guardianship established pursuant to § 360 or 366.26.
- The child has had his or her dependency jurisdiction terminated concurrently or subsequently to the establishment of the kinship guardianship.

Links to Agency Policies

Child Welfare Services Manual, Div. 31, Chap. 31-100 through 31-200 (PDF - 400 KB)

[Kinship Guardianship Assistance Payment Program](#)

Colorado

Current Through July 2018

Definitions

Citation: Rev. Stat. § 19-1-103; Code of Regs. 12 CCR 2509-4, 7.304.11.1

A 'custodian' is a person who has been providing shelter, food, clothing, and other care for a child in the same fashion as a parent would, whether or not by order of court. The term 'physical custodian' means a guardian, whether or not appointed by court order, with whom the juvenile has resided.

The term 'kin' may refer to a relative of the child, a person ascribed by the family as having a familylike relationship with the child, or a person that has a prior significant relationship with the child. These relationships take into account cultural values and continuity of significant relationships with the child.

In regulation: For the purpose of the Relative Guardianship Assistance Program, a relative is defined as follows:

- An adult who is related to the youth or child in the fifth degree of kinship
- An adult who is related to the youth or child through marriage or adoption
- A person ascribed by the family as having a familylike relationship
- An individual that had a prior significant relationship with the youth or child

Purpose of Guardianship

Rev. Stat. § 26-5-110

The general assembly declares the following:

- Children and youth in the child welfare system are better served when family ties are preserved and strengthened because permanent family connections are critical to a child's overall well-being and development.
- The general assembly has established through past legislation a statutory preference for placement with relatives and kin at all stages of a child welfare case.
- To help support permanency with family and kin relationships when adoption and reunification are either unavailable or not appropriate permanency options for the child, the general assembly created the 'Relative Guardianship Assistance Program' in 2010.
- The State of Colorado has a strong interest in providing permanency options to children who are part of the traditional foster care system and who are not otherwise able to be placed with relatives or kin.
- It is appropriate to further the goal of permanency by passing legislation to provide financial assistance for the care of children, when it is in accordance with Federal law, to relatives, kin, and foster parents who have a significant relationship with the child and who have assumed legal guardianship of children who they previously cared for as certified foster parents.
- It is therefore the intent of the general assembly that the State guardianship assistance program will be utilized to enhance family preservation and provide a permanency option for children who have developed a significant relationship with their foster parent caregiver when reunification and adoption are either unavailable or not appropriate permanency options for the child, and provide stability in safe and stable placements with relatives, kin, and foster parent caregivers.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. § 19-1-103(60), (73)

The term 'guardianship of the person' means the duty and authority vested by court action to make major decisions affecting a child, including, but not limited to the following:

- The authority to consent to marriage, to enlistment in the armed forces, and to medical or surgical treatment
- The authority to represent a child in legal actions and to make other decisions of substantial legal significance concerning the child
- The authority to consent to the adoption of a child when the parent-child legal relationship has been terminated by judicial decree
- The rights and responsibilities of legal custody when legal custody has not been vested in another person, agency, or institution

'Legal custody' is the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for a child and, in an emergency, to authorize surgery or other extraordinary care. 'Legal custody may be taken from a parent only by court action.

For purposes of determining the residence of a child as provided in § 22-1-102 (2)(b), guardianship shall be in the person to whom legal custody has been granted by the court.

Qualifying the Guardian

Citation: Rev. Stat. § 19-3-605

In making placement determinations, the court shall consider all pertinent information related to modifying the placement of the child, including the following:

- An individualized assessment of the child's needs
- Whether the child's placement is a safe and potentially permanent placement for the child, including documentation that the department has adequately screened the family member who is seeking to care for the child and any adult residing in the home and that all required criminal history record checks and other background checks have been completed
- The child's age, developmental stage, and attachment needs
- Whether the child has significant psychological ties to a person who could provide a permanent placement for the child, including a relative, and, if so, whether this person maintained contact with the child during the child's placement out of the home
- Whether a person who could provide a permanent placement for the child is willing to maintain appropriate contact after an adoption of the child with the child's relatives, particularly siblings, when such contact is safe, reasonable, and appropriate
- Whether a person who could provide a permanent placement for the child is aware of the child's culture and is willing to provide the child with positive ties to his or her culture
- The child's medical, physical, emotional, or other specific needs and whether a person who could provide a permanent placement for the child is able to meet the child's needs
- The child's attachment to the child's caregiver at the time of the hearing and the possible effects on the child's emotional well-being if the child is removed from the caregiver's home

Procedures for Establishing Guardianship

Citation: Rev. Stat. §§ 19-3-605; 19-5-104

Following an order of termination of parental rights, the court shall consider, but shall not be bound by, a request that guardianship and legal custody of the child be placed with a relative of the child. When ordering guardianship of the child, the court may give preference to a grandparent, aunt, uncle, brother, sister, half-sibling, or first cousin of the child when such relative has made a timely request and the court determines that such placement is in the best interests of the child.

If the court terminates the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the religious background of the child, shall order guardianship of the person and legal custody transferred to any of the following:

- The county Department of Social Services
- A licensed child-placing agency
- A relative of the child

- An individual determined to be of good moral character through a process that includes the assessment made pursuant to § 19-5-206(2)(g), if such individual has had the child living in his or her home for 6 months or more, including a foster parent or a designated adoptive parent

The court shall consider, but shall not be bound by, a request that custody of the child, with the option of applying for adoption, be placed in a grandparent, aunt, uncle, brother, or sister of the child or a foster parent. When ordering legal custody of the child, the court shall give preference to a grandparent, aunt, uncle, brother, or sister of the child when that relative has made a timely request for custody of the child and the court determines that such placement is in the best interests of the child.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Rev. Stat. § 26-5-110

Assistance from the guardianship assistance program is available when a court has determined that adoption and reunification with the child's parent are not appropriate permanency options for the child. Program assistance is available in the following situations:

- To relatives, kin, and persons ascribed by the family as having a familylike relationship with the child or children and who:
 - » Are committed to the child's or children's permanency
 - » Were the certified foster parent of the child for a minimum of 6 consecutive months at the time they assumed guardianship
 - » Have assumed legal guardianship for the child
- To a certified foster parent who does not otherwise qualify for the program pursuant to the paragraph above if:
 - » The child in the certified foster parent's care is age 12 or older, or if at least one of the children in the sibling group is age 11 or younger and has an older sibling who receives assistance from the program.
 - » The court finds that:
 - The child has a substantial psychological tie to the foster parent, such that it would be seriously detrimental to the child's emotional well-being to remove the child or children from the parent's care.
 - Adoption and reunification are not appropriate permanency options for the child, the child's foster parent is unable to adopt the child because of exceptional circumstances, but he or she is willing and capable of providing the child with a stable and permanent environment.
 - » The certified foster parent of the child has cared for the child for a minimum of 12 months.
 - » The certified foster parent has assumed legal guardianship of the child with the consent of a child who is age 12 or older.

Links to Agency Policies

Colorado Code of Regulations, [Kinship Care, Social Services Rules, 12 CCR 2509-4](#) (PDF - 1,018 KB)

Colorado Department of Human Services, [Kinship Connection](#)

Connecticut

Current Through July 2018

Definitions

Citation: Gen. Stat. §§ 17a-126; 17a-114; 45a-604; Code of Regs. § 17a-126-2

As used in this section, the term 'caregiver' means any of the following:

- A fictive kin caregiver, as defined in § 17a-114, who is licensed or approved to provide foster care and who is caring for a child
- A relative caregiver, which means a person who is age 21 or older; related to a child by birth, adoption, or marriage; and is licensed or approved to provide foster care
- A person who is a licensed or approved foster care provider and is caring for a child because the parent of the child has died or become otherwise unable to care for the child for reasons that make reunification with the parent and adoption not viable options within the foreseeable future

A 'fictive kin caregiver' is a person who is age 21 or older and who is unrelated to a child by birth, adoption, or marriage but who has an emotionally significant relationship with the child or the child's family amounting to a familial relationship.

'Permanent guardianship' means a guardianship that is intended to endure until the minor reaches the age of majority without termination of the parental rights of the minor's parents.

In regulation: The term 'guardian' means one who has the authority and obligations of 'guardianship,' as defined below. The term 'subsidized guardian' means a person to whom legal guardianship has been awarded and who otherwise qualifies for a subsidy under §§ 17a-126-1 through 17a-126-23, inclusive, of the regulations of Connecticut State Agencies.

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Gen. Stat. § 45a-604

The term 'guardianship' means guardianship of the person of a minor, which includes the following:

- The obligation of care or control
- The authority to make major decisions affecting the child's education and welfare, including, but not limited to, consent determinations regarding marriage; enlistment in the armed forces; and major medical, psychiatric, or surgical treatment

Qualifying the Guardian

Citation: Code of Regs. § 17a-126-3

The Department of Children and Families (DCF) shall determine through an assessment that the relative caregiver is capable of providing appropriate care for the child without the continued provision of services by DCF. In addition to the requirements for relative certification set forth in regulation, the assessment shall include the following:

- The health of persons living in the home does not present a hazard to the child.
- The caregiver is physically, intellectually, and emotionally capable of providing care, guidance, and supervision of the child, including:
 - » Ensuring that the child receives needed medical care
 - » Providing for the child's physical needs
 - » Promoting the social, intellectual, emotional, and physical development of the child
 - » Ensuring adequate opportunity for cultural and educational activities
 - » Ensuring the child's participation in an approved education program, including regular school attendance

Before petitioning for the transfer of guardianship from DCF to a relative caregiver, DCF shall secure and evaluate information necessary to determine if a transfer of guardianship is in the child's best interests. The child shall be interviewed and the opinion of the child regarding the proposed transfer of guardianship shall be taken into consideration.

Approval as a guardian shall be denied if any member of the household of the relative caregiver:

- Has been convicted of any of the following:
 - » Injury or risk of injury to a minor
 - » Impairing the morals of a minor
 - » A violent crime against a person
 - » The possession, use, or sale of controlled substances within the past 5 years
 - » Illegal use of a firearm
- Has ever had an allegation of child abuse or neglect substantiated
- Has had a minor removed from their care because of child abuse or neglect
- Has failed a drug screen

Procedures for Establishing Guardianship

Citation: Gen. Stat. §§ 45a-616a; 45a-617

Effective October 1, 2018: The court shall issue an order for permanent legal guardianship if the court finds, by clear and convincing evidence, that the permanent legal guardianship is in the best interests of the child and that the following have been proven by clear and convincing evidence:

- One of the statutory grounds for termination of parental rights exists or the parents have voluntarily consented to the appointment of a permanent guardian.
- Adoption of the child or youth is not possible or appropriate.
- If the child is at least age 12, the child consents to the proposed appointment of a permanent guardian.
- If the child is under age 12, the proposed permanent guardian is a relative or already serving as the permanent guardian of at least one of the child's siblings.
- The child has resided with the proposed permanent guardian for at least 1 year.
- The proposed permanent guardian is suitable and worthy and is committed to remaining the permanent guardian and assuming the right and responsibilities for the child until the child reaches the age of majority.

When appointing a permanent guardian of a minor, the court shall take into consideration the following factors:

- The ability of the prospective permanent guardian to meet, on a continuing day-to-day basis, the physical, emotional, moral, and educational needs of the minor
- The minor's wishes, if he or she is over age 12 or is of sufficient maturity and capable of forming an intelligent preference
- The existence or nonexistence of an established relationship between the minor and the prospective permanent guardian
- The best interests of the child

There shall be a rebuttable presumption that appointment of a grandparent or other relative related by blood or marriage as a permanent guardian is in the best interests of the child.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Gen. Stat. § 45a-616a

Effective October 1, 2018: If a permanent guardian appointed under this section becomes unable or unwilling to serve as permanent guardian, the court may appoint a successor guardian or permanent guardian in accordance with this section and sections 45a-616 and 45a-617 or may reinstate a parent of the minor who was previously removed as guardian of the person of the minor, if the court finds that the factors that resulted in the removal of the parent as guardian have been resolved satisfactorily, and that it is in the best interests of the child to reinstate the parent as guardian.

Kinship Guardianship Assistance

Citation: Gen. Stat. §§ 17a-98a; 17a-126

DCF shall establish a kinship navigator program. The program shall ensure that:

- When DCF places a child with a relative for foster care, DCF informs the relative regarding procedures to become licensed as a foster parent.
- Grandparents and other relatives caring for a child are provided with information on the array of State services and benefits for which they may be eligible, including the subsidy program.

DCF shall establish a program of subsidized guardianship for the benefit of children who have been in foster care for not less than 6 consecutive months, for whom neither reunification with a parent nor adoption is an appropriate permanency option, and who have been living with a caregiver. DCF shall provide the following subsidies under the subsidized guardianship program:

- A special-needs subsidy, a lump sum payment for up to \$2,000 for one-time expenses resulting from the assumption of care of the child
- A medical subsidy comparable to the medical subsidy to children in the subsidized adoption program
- A monthly subsidy on behalf of the child that shall not exceed the foster care maintenance payment that would have been paid if the child had remained in licensed foster care

A guardianship subsidy shall continue, subject to annual review, until the child reaches age 18. A guardianship subsidy may continue, subject to annual review, through the child's 21st birthday, provided the child is enrolled full time in a secondary education program or in an institution that provides postsecondary or vocational education or participating full time in a program that is designed to promote or remove barriers to employment.

Links to Agency Policies

Connecticut Department of Children and Families Agency Regulations, Sections 17a-126-1 through 17a-126-23, [Subsidized Guardianship](#)

Delaware

Current Through July 2018

Definitions

Citation: Ann. Code Tit. 13, § 2302; Tit. 10, § 901

The term 'guardian' means a nonparent or an agency charged with caring for a child during the child's minority.

The term 'relative' means any person within the immediate family, and any grandparent, uncle, aunt, first cousin, great-grandparent, grandaunt, granduncle, half-brother, or half-sister.

Purpose of Guardianship

Citation: Ann. Code Tit. 13, § 2350

Permanent guardianship models the requirements of 'legal guardianship' under the Adoption and Safe Families Act of 1997 (P.L. 105-89, 42 U.S.C., § 675(7)). Permanent guardianship is intended to create a relationship between a child and caregiver that is permanent and self-sustaining and which creates a permanent family for the child without complete severance of the biological bond.

A Guardian's Rights and Responsibilities

Citation: Ann. Code Tit. 13, § 2340

A guardian shall be granted such powers, rights, and duties that are necessary to protect, manage, and care for the child. The guardian of the child may exercise the same powers, rights, and duties respecting the care, maintenance, and treatment of the child as a parent would, except that the guardian of the child is not liable to third persons for acts of the child solely by reason of the guardianship relationship. The guardian is entitled to custody of the child and may establish the child's place of abode within or outside the State.

The guardian shall provide the child with:

- A physically and emotionally healthy and safe living environment and daily care
- Education
- All necessary and appropriate medical treatment, including, but not limited to, medical, dental, and psychiatric examinations, treatment, and/or surgery

The guardian shall make decisions regarding:

- Education
- Travel
- All necessary and appropriate medical treatment, including, but not limited to, medical, dental, and psychiatric examinations, treatment, and/or surgery
- The child's right to marry or enlist in the armed forces
- Representation of the child in legal actions
- Any other matter that involves the child's welfare and upbringing

The guardian shall:

- Be responsible for the health, education, and welfare of the child
- Comply with all terms of any court order to provide the child's parents with visitation, contact, or information

The court, in its discretion, may expressly limit the duties and powers of the guardian as set forth in this chapter.

Qualifying the Guardian

Citation: Ann. Code Tit. 13, §§ 2351; 2353

A relative, foster parent, or guardian may serve as permanent guardian of a child and may petition the family court for a permanent guardianship order regarding a child that is not his, hers, or theirs. The proposed permanent guardian must:

- Be emotionally, mentally, physically, and financially suitable to become the permanent guardian
- Be a foster parent or guardian who has been caring for the child for at least 6 months, held guardianship for at least 6 months at the time of the filing of the petition, or be a relative
- Have expressly committed to remain the permanent guardian and assume the rights and responsibilities for the child for the duration of the child's minority
- Have demonstrated an understanding of the financial implications of becoming a permanent guardian

Procedures for Establishing Guardianship

Citation: Ann. Code Tit. 13, §§ 2351; 2352; 2353

The Department of Services for Children, Youth and Their Families (DSCYF), a licensed agency, or guardian ad litem may petition the Family Court for a permanent guardianship order so long as the proposed permanent guardian or guardians consent to the appointment.

A petition for permanent guardianship shall contain the following information:

- The grounds for the granting of an order of permanent guardianship
- A statement outlining prior efforts to place the child for adoption, if applicable

The court shall grant a permanent guardianship if it finds by clear and convincing evidence that:

- One of the statutory grounds for termination of parental rights has been met.
- Adoption of the child is not possible or appropriate.
- Permanent guardianship is in the best interests of the child.
- The proposed permanent guardian has been found to be suitable.
- If the child is age 14 or over, the child consents to the guardianship or, if the child does not consent, just cause why the guardian should be appointed.
- If the proposed permanent guardian is a foster parent or parents:
 - » The child is at least age 12.
 - » The proposed permanent guardian is the permanent guardian of one of the child's siblings.
 - » The child receives substantial governmental benefits for a serious physical and/or mental disability that would no longer be available to the child if parental rights were terminated or the child was adopted.

If the court determines that the requirements above have been met, then the court also shall determine, by a preponderance of evidence, the nature and extent, if any, of any contact, sharing of information, and/or visitation between the parent and the child. In making such a determination, the court shall apply the best interests of the child standard.

The parent or parents may voluntarily consent to the permanent guardianship provided the requirements above are met.

Contents of a Guardianship Order

Citation: Ann. Code Tit. 13, § 2356

If the court grants permanent guardianship, it shall include in that order provisions regarding visitation by the child with the child's parents, contact by the child with his or her parents, and the sharing of information to be provided to the parents about the child, all based upon the child's best interests. The order granting permanent guardianship may prohibit visitation, contact, or information if such prohibition is in the child's best interests. The order granting permanent guardianship may incorporate an agreement reached by the parties.

Modification/Revocation of Guardianship

Citation: Ann. Code Tit. 13, § 2359

Permanent guardianship of a child terminates upon the permanent guardian's death; upon adoption of the child; when the child reaches the age of majority; or as otherwise ordered by the court.

An order of permanent guardianship may be modified regarding contact, visitation, or sharing of information only upon a finding that there has been a substantial change in material circumstances and that modification is in the best interests of the child.

An order of permanent guardianship may be rescinded only upon a finding that there has been a substantial change in material circumstances and that rescission is in the best interests of the child.

A parent may not petition the court to rescind a permanent guardianship once granted under this chapter. When the permanent guardianship is rescinded by the court, custody of the child shall not automatically revert to the parent. At any subsequent hearing, the parent shall be considered with no greater priority than any other person or agency, and in entering any further order regarding the child the court shall apply the best interests of the child standard. If the permanent guardianship is rescinded, and DSCYF held custody immediately prior to the entry of the order, custody shall revert to DSCYF.

Upon a showing by affidavit of immediate harm to a child, the court may:

- Temporarily stay a permanent guardianship order on an ex parte basis pending a hearing and grant temporary custody of the child to DSCYF or temporary guardianship to a petitioner
- Stay the visitation, contact, or information provisions of a permanent guardianship order on an ex parte basis pending a hearing

Kinship Guardianship Assistance

Citation: Ann. Code Tit. 31, § 356

DSCYF and the Department of Health and Social Services shall establish and operate the Kinship Care Program that promotes the placement of children with relatives when a child needs out-of-home placement, when such placement is in the best interests of the child, and when the child is not in the custody or care of the State.

The Kinship Care Program shall establish eligibility guidelines for kinship caregivers to qualify for kinship care benefits and services, including the following criteria:

- The caregiver must be related to the child by blood or marriage within the fifth degree of consanguinity.
- The caregiver must have guardianship of the child or actively pursue guardianship.
- The child must reside in the home of the caregiver.
- The caregiver must have income of no more than 200% of the Federal poverty level.
- The parent or parents of a child in the kinship care program may not reside in the home of the kinship caregiver.

Links to Agency Policies

Delaware Family Court, [Guardianship Overview](#)

District of Columbia

Current Through July 2018

Definitions

Citation: Ann. Code §§ 16-2382; 16-2301

The term 'guardianship order' means the court document that establishes the permanent guardianship and enumerates the permanent guardian's rights and responsibilities concerning the care, custody, and control of the child. The term 'permanent guardian' means an individual or individuals designated by the court pursuant to this subchapter.

The term 'guardianship of the person of a minor' means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and concern with his or her general welfare. The term includes, but is not limited to the following:

- The authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance
- The authority and duty of reasonable visitation (except as limited by court order)
- The rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution)
- The authority to exercise residual parental rights and responsibilities when the rights of the child's parents or only living parent have been judicially terminated or when both parents are dead

Purpose of Guardianship

Citation: Ann. Code § 16-2381

The general purpose of this subchapter is to:

- Encourage stability in the lives of certain children who have been adjudicated to be neglected and have been removed from the custody of their parent, by providing judicial procedures for the creation of a permanent guardianship in the circumstances set forth in this subchapter
- Ensure that the constitutional rights of all parties are recognized and enforced in all proceedings conducted pursuant to this subchapter while ensuring that the fundamental needs of children are not subjugated to the interests of others
- Increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing government supervision

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 16-2389

Unless the court specifies otherwise, the permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

- Protect, nurture, discipline, and educate the child
- Provide food, clothing, shelter, education as required by law, and routine health care for the child
- Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances
- Authorize a release of health-care and educational information
- Authorize a release of information when consent of a parent is required by law, regulation, or policy
- Consent to social and school activities of the child
- Consent to military enlistment
- Obtain representation for the child in legal actions
- Determine the nature and extent of the child's contact with other persons

The permanent guardian is not liable to third persons by reason of the guardianship relationship for acts of the child.

Qualifying the Guardian

Citation: Ann. Code § 16-2383

A guardianship order may not be entered unless the child has been adjudicated to be neglected and has been living with the proposed permanent guardian for at least 6 months. If the child is age 14 or older, the court shall designate the permanent guardian selected by the child unless the court finds that the designation is contrary to the child's best interests.

The court may issue a guardianship order only if the court finds that:

- The permanent guardianship is in the child's best interests.
- Adoption, termination of parental rights, or return to the parent is not appropriate for the child.
- The proposed permanent guardian is suitable and able to provide a safe and permanent home for the child.

In determining whether it is in the child's best interests that a permanent guardian be designated, the court shall consider each of the following factors:

- The child's need for continuity of care and caregivers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages
- The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child
- The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caregivers, including the proposed permanent guardian
- To the extent feasible, the child's opinion of his or her own best interests in the matter

Evidence that drug-related activity continues to exist in a child's home environment after intervention and services have been provided shall be given great weight.

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 16-2384; 16-2388

A motion for a permanent guardianship may be filed any time after a neglect petition is filed. The motion shall include the following:

- The name, sex, date and place of birth, and current placement of the child
- The proposed permanent guardian's name and relationship to the child
- The name and address of the child's parents
- A plain and concise statement of the facts and opinions on which the permanent guardianship is sought
- A description of the child's mental and physical health
- A statement why permanent guardianship, rather than adoption, termination of parental rights, or return to the parent, is in the child's best interests
- A statement as to the various efforts taken by the moving party to locate the parent of the child
- An itemization of the child's assets
- The name of proposed successor guardians, if any, and his or her relationship to the child and proposed permanent guardian
- Written consents, if any, to the permanent guardianship

The court shall begin the adjudicatory hearing by determining whether all parties are present and whether proper notice of the hearing has been given. If a parent has been given proper notice but fails to appear, the court may proceed in the parent's absence. All evidence that is relevant and material to the issues before the court shall be admitted.

The court may enter, modify, or terminate a guardianship order after considering all of the evidence presented, including the mayor's report and recommendation, and after making a determination based upon a preponderance of the evidence that creation, modification, or termination of the guardianship order is in the child's best interests. If the court does not find that sufficient grounds exist to create, modify, or terminate a guardianship order, the motion may be dismissed.

Contents of a Guardianship Order

Citation: Ann. Code §§ 16-2389; 16-2390; 16-2392

Entry of a guardianship order does not terminate the parent and child relationship, including:

- The right of the child to inherit from his or her parents
- The parents' right to visit or contact the child (except as limited by the court)
- The parents' right to consent to the child's adoption
- The parents' right to determine the child's religious affiliation
- The parents' responsibility to provide financial, medical, and other support for the child

The guardianship order may specify the frequency and nature of visitation or contact between relatives and the child. The court may determine whether the visitation or contact is in the child's best interests.

The court shall make a permanency determination and close the neglect case upon motion by any party to the permanent guardianship proceeding if the court finds that such a determination is in the child's best interests.

The court shall have jurisdiction to enter a guardianship order and shall retain jurisdiction to enforce, modify, or terminate a guardianship order until a child reaches age 21, provided that when the child reaches age 18, the child consents and the court finds it is in the best interests of the child. A child who exits foster care to guardianship may not reenter foster care after age 18.

Every guardianship order shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the court's jurisdiction. Except as otherwise expressly provided by law, in all hearings and cases tried before the court pursuant to this subchapter, the judgment of the court shall be final.

Modification/Revocation of Guardianship

Citation: Ann. Code §§ 16-2395; 16-2398

A guardianship order may be modified or terminated if the court finds that there has been a substantial and material change in the child's circumstances since the entry of the guardianship order and that it is in the child's best interests to modify or terminate the guardianship order.

The court shall hold a hearing before modifying or terminating a guardianship order and shall, at the end of the hearing, enter a written order reciting the findings upon which the order is based.

Upon terminating the guardianship, the permanent guardian shall no longer be entitled to physical custody of the child, have any other parental rights and responsibilities concerning the child, or have party status in any further court proceedings.

An order for permanent guardianship may designate a successor guardian. The successor guardian shall immediately obtain physical custody of the child and assume the permanent guardian's rights and responsibilities concerning the child upon the permanent guardian's death or physical or mental infirmity.

The successor guardian shall file a motion with the court for modification of the original guardianship order within 30 days of obtaining physical custody of the child. Unless otherwise ordered by the court, the successor guardian shall assume the permanent guardian's rights and responsibilities concerning the child until the hearing is held.

Before issuing a final order transferring the permanent guardian's rights and responsibilities to the successor guardian, the court shall find that:

- The successor guardian was duly designated by the permanent guardian.
- The permanent guardian is deceased or is physically or mentally infirm.
- The transfer of guardianship is in the child's best interests.
- Adoption, termination of parental rights, or return to the parent is not appropriate for the child.
- The successor guardian is suitable and able to provide a safe and permanent home for the child.

Kinship Guardianship Assistance

Citation: Ann. Code § 16-2399

To the extent that funds are available, the mayor may make subsidy payments to a permanent guardian, irrespective of the permanent guardian's State of residence, as needed on behalf of a child with special needs when the permanent guardian has the capability of providing the permanent family relationships needed by the child in all areas except financial. For the purposes of this section a 'child with special needs' includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group that should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement except for the acceptance of the child as a member of the permanent guardian's family.

For a permanent guardian to be eligible for subsidy payments:

- The child must be adjudicated neglected pursuant to § 16-2317.
- The child must be committed to the legal custody of the Child and Family Services Agency.
- A subsidy payment agreement must be entered into by the agency and the permanent guardian.

Subsidy payments may be paid, subject to the availability of appropriated funds, on a long-term basis to help a permanent guardian whose income is limited and likely to remain so, or on a time-limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

Eligibility for subsidy payments may continue during the period of the guardianship order until the child reaches age 18. For guardianships that are finalized on or after May 7, 2010, eligibility for subsidy payments shall continue during the period of the guardianship order until the child reaches age 21.

Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

Links to Agency Policies

Municipal Regulations, Title 29, Chapter 61, [Permanent Guardianship Subsidies for Kinship Caregivers](#)

Child and Family Services Agency, [Case Planning When the Permanency Goal Is Permanent Guardianship](#) (PDF - 204 KB)

Florida

Current Through July 2018

Definitions

Citation: Ann. Stat. §§ 39.01; 39.5086

The term 'permanent guardian' means the relative or other adult in a permanent guardianship of a dependent child under § 39.6221.

'Permanent guardianship of a dependent child' means a legal relationship that a court creates under § 39.6221 between a child and a relative or other adult approved by the court that is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decision-making on behalf of the child.

'Fictive kin,' as defined by § 39.4015(2)(d), is an individual who is unrelated to the child by either birth or marriage but has such a close emotional relationship with the child that he or she may be considered part of the family.

The term 'kinship care' means the full-time care of a child placed in out-of-home care by the court in the home of a relative or fictive kin.

The term 'kinship navigator program' means a program designed to ensure that kinship caregivers are provided with necessary resources for the preservation of the family. The term 'relative' means an individual who is caring full time for a child placed in out-of-home care by the court and who is either of the following:

- Related to the child within the fifth degree by blood or marriage to the parent or stepparent of the child
- Related to a half-sibling of that child within the fifth degree by blood or marriage to the parent or stepparent

Purpose of Guardianship

Citation: Ann. Stat. § 39.5085

It is the intent of the legislature in enacting this section to:

- Provide for the establishment of procedures and protocols that serve to advance the continued safety of children by acknowledging the valued resource uniquely available through grandparents, relatives of children, and specified nonrelatives of children
- Recognize family relationships in which a grandparent or other relative is the head of a household that includes a child otherwise at risk of foster care placement
- Enhance family preservation and stability by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the Department of Children and Families
- Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under § 39.6221 if the guardian is a relative, that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives
- Reserve the limited casework and supervisory resources of the courts and the department for those cases in which children do not have the option for safe, stable care within the family

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 39.6221

The court shall give the permanent guardian a separate order establishing the authority of the permanent guardian to care for the child and shall provide any other information the court deems proper to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of § 39.202.

A permanent guardianship of a dependent child established under this chapter is not a plenary guardianship and is not subject to the requirements of chapter 744.

Placement of a child in a permanent guardianship does not terminate the parent-child relationship, including:

- The right of the child to inherit from his or her parents
- The parents' right to consent to the child's adoption
- The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court

Qualifying the Guardian

Citation: Ann. Stat. § 39.521(2)(o)

If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report must be completed. The study must include, at a minimum, the following:

- An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child
- Child abuse and neglect records checks and local and statewide criminal and juvenile records checks on all household members age 12 or older
- Fingerprint-based checks of any household members who are age 18 or older that are forwarded to the Federal Bureau of Investigation for State and national criminal history information
- Out-of-state criminal records checks for any individual who has resided in a State other than Florida if that State's laws allow the release of these records
- An assessment of the physical environment of the home
- A determination of the financial security of the proposed legal custodians
- A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home
- Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process
- Documentation that information regarding support services available in the community has been provided to the proposed legal custodians
- The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 39.6221

If a court determines that reunification or adoption is not in the best interests of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

- The child has been in the placement for no less than the preceding 6 months.
- The permanent guardian is suitable and able to provide a safe and permanent home for the child.
- The court determines that the child and the relative or other adult are not likely to need supervision or services of the department to ensure the stability of the permanent guardianship.
- The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
- The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court.
- The child demonstrates a strong attachment to the prospective permanent guardian and such guardian has a strong commitment to permanently caring for the child.

Contents of a Guardianship Order

Citation: Ann. Stat. § 39.6221

In its written order establishing a permanent guardianship, the court shall:

- List the circumstances or reasons why the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact
- State the reasons why a permanent guardianship is being established instead of adoption
- Specify the frequency and nature of visitation or contact between the child and his or her parents
- Specify the frequency and nature of visitation or contact between the child and his or her grandparents
- Specify the frequency and nature of visitation or contact between the child and his or her siblings
- Require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court

Placement of a child in a permanent guardianship does not terminate the parent-child relationship, including the following:

- The right of the child to inherit from his or her parents
- The parents' right to consent to the child's adoption
- The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 39.6221

The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.

Kinship Guardianship Assistance

Citation: Ann. Stat. §§ 39.5086; 39.6225

A kinship navigator program helps relative caregivers and fictive kin of children in out-of-home care to navigate the broad range of services available to them from public, private, community, and faith-based organizations. Each community-based care lead agency may establish a kinship navigator program that:

- Coordinates with other State or local agencies that promote service coordination or provide information and referral services
- Consults with kinship caregivers, youth raised by kinship caregivers, and relevant agencies and organizations
- Provides information through a toll-free telephone hotline and a kinship care website
- Promotes partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant governmental agencies

The Guardianship Assistance Program provides guardianship assistance payments to relatives and fictive kin who meet eligibility requirements. To approve an application for the program, the department shall determine that all of the following requirements have been met:

- The court has granted legal custody to the guardian.
- The guardian has been licensed to care for the child.
- The child was eligible for foster care payments for at least 6 consecutive months while residing in the licensed guardian's home.

Links to Agency Policies

Florida Department of Children and Families, [Relative Caregiver Program](#) (PDF - 377 KB)

Georgia

Current Through July 2018

Definitions

Citation: Ann. Code § 15-11-2

The term 'guardianship order' means the court judgment that establishes a permanent guardianship and enumerates a permanent guardian's rights and responsibilities concerning the care, custody, and control of a child.

The term 'fictive kin' means a person who is known to a child as a relative, but is not, in fact, related by blood or marriage to the child and with whom the child has resided or had significant contact. The term 'other persons who have demonstrated an ongoing commitment to a child' includes fictive kin and other individuals, including, but not limited to, neighbors, teachers, scout masters, caregivers, or parents of friends of the child and with whom the child has resided or had significant contact.

The term 'relative' means a person related to a child by blood, marriage, or adoption, including the spouse of any of those persons even if the marriage was terminated by death or dissolution.

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Ann. Code §§ 29-2-21; 29-2-22

The power of a guardian over the minor shall be the same as that of a parent over a child; the guardian standing in place of the parent. A guardian shall:

- Arrange for the support, care, education, health, and welfare of the minor, considering the minor's available resources
- Take reasonable care of the minor's personal effects
- Expend money of the minor that has been received by the guardian for the minor's current needs for support, care, education, health, and welfare

A guardian, solely by reason of the guardian-minor relationship, is not personally liable for the following:

- The minor's expenses
- Contracts entered into in the guardian's fiduciary capacity
- The acts or omissions of the minor
- Obligations arising from ownership or control of property of the minor
- Other acts or omissions occurring in the course of the guardianship

The appointment of a guardian shall vest in the guardian the exclusive power, without court order, to:

- Take custody of the person of the minor and establish the minor's place of dwelling within this State
- Give any consent or approval that may be necessary for medical or other professional care, counsel, treatment, or services for the minor
- Bring, defend, or participate in legal, equitable, or administrative proceedings, including alternative dispute resolution, as are appropriate for the support, care, education, health, or welfare of the minor in the name of or on behalf of the minor
- Execute a surrender of rights to enable the adoption of the minor
- Exercise those other powers reasonably necessary to provide adequately for the support, care, education, health, and welfare of the minor

Qualifying the Guardian

Citation: Ann. Code § 15-11-240

The juvenile court shall be vested with jurisdiction to appoint a permanent guardian for a child adjudicated as a dependent child in accordance with this article. Prior to the entry of an order, the court shall:

- Find that reasonable efforts to reunify the child with his or her parents would be detrimental to the child or find that the living parents of the child have consented to the permanent guardianship
- Find that termination of parental rights and adoption is not in the best interests of the child

- Find that the proposed permanent guardian can provide a safe and permanent home for the child
- Find that the appointment of a permanent guardian for the child is in the best interests of the child and that the individual chosen as the child's permanent guardian is the most appropriate individual to be the child's permanent guardian, taking into consideration the best interests of the child
- If the child is age 14 or older, find that the appointment of a permanent guardian for the child is in the best interests of the child and that the individual chosen by the child as the child's permanent guardian is the most appropriate individual to be the child's permanent guardian, taking into consideration the best interests of the child

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 15-11-241; 15-11-243(b)

The petition for the appointment of a permanent guardian shall set forth:

- The name and date of birth of the child
- The name, address, and county of domicile of the petitioner and the individual nominated to serve as guardian, and their relationship to the child, if any
- A statement that:
 - » Reasonable efforts to reunify the child with his or her parents would be detrimental to the child
 - » Termination of parental rights and adoption is not in the child's best interests
 - » The proposed guardian can provide a safe and permanent home for the child
 - » The appointment of a permanent guardian is in the child's best interests and that the individual chosen as the child's guardian is the most appropriate individual to be the child's permanent guardian
 - » If the child is age 14, that the appointment of a permanent guardian is in the child's best interests and that the individual chosen by the child as the child's permanent guardian is the most appropriate individual to be the child's permanent guardian
 - » Whether, to the petitioner's knowledge, there exists any notarized or witnessed document made by a parent of the child that deals with the guardianship of the child and the name and address of any designee named in the document
- In addition to the petitioner and the nominated guardian and, if the parent of the child has not consented to the permanent guardianship, the names and addresses of the following relatives of the child whose parents' whereabouts are known:
 - » The adult siblings of the child
 - » If there is no adult sibling of the child, the grandparents of the child
 - » If there is no grandparent of the child, any three of the nearest adult relatives of the child

A hearing shall be conducted in accordance with § 29-2-18 to determine the best interests of the child who was adjudicated as a dependent child, and in reaching its determination the court shall consider § 15-11-240.

Contents of a Guardianship Order

Citation: Ann. Code § 15-11-242

Permanent guardianship orders entered pursuant to § 15-11-240 shall:

- Remain in effect until the child adjudicated as a dependent child reaches age 18 or becomes emancipated
- Not be subject to review by the court except as provided in § 15-11-244
- Establish a reasonable visitation schedule that allows the child adjudicated as a dependent child to maintain meaningful contact with his or her parents through personal visits, telephone calls, letters, or other forms of communication or specifically include any restriction on a parent's right to visitation

A permanent guardian shall have the rights and duties of a permanent guardian as provided in §§ 29-2-21, 29-2-22, and 29-2-23 and shall take the oath required of a guardian as provided in § 29-2-24.

Modification/Revocation of Guardianship

Citation: Ann. Code § 15-11-244

The court shall retain jurisdiction over a guardianship action under this part for the sole purpose of entering an order following the filing of a petition to modify, vacate, or revoke the guardianship and appoint a new guardian.

The guardianship shall be modified, vacated, or revoked based upon a finding, by clear and convincing evidence, that there has been a material change in the circumstances of the child who was adjudicated as a dependent child or the guardian and that such modification, vacation, or revocation of the guardianship order and the appointment of a new guardian is in the best interests of the child. Appointment of a new guardian shall be subject to the provisions of §§ 15-11-240 and 15-11-241.

Kinship Guardianship Assistance

Citation: Child Welf. Pol. Man., Policy 10.8

Subsidized guardianship is a monthly financial payment that follows a rate/age schedule. Subsidized guardianship payments are initiated after nonreunification is granted by the court, the child has been placed with the relative for at least 6 months under the supervision of the Division of Family and Children Services (DFCS), and permanent guardianship is transferred to the relative. Payments begin the month after the child is transferred from the legal custody of DFCS to the permanent guardianship of the relative.

DFCS shall utilize the following eligibility criteria for subsidized guardianship payments for children who achieved permanency with a relative:

- The relative must meet the Temporary Assistance to Needy Families degree of relationship.
- A relative/nonrelative care assessment has been approved.
- Nonreunification was granted by the court.
- A subsidized guardianship/non-relative subsidized guardianship application and agreement has been signed by the relative and approved by the county department.
- The child has resided with the relative under DFCS supervision for a minimum of 6 months prior to the transfer of permanent guardianship.
- The relative was granted permanent guardianship of the child until the child reaches age 18.
- The child is a citizen or legal permanent resident of the United States.
- The income of the child, excluding the child's wages, is less than the amount of the subsidized guardianship payments.

Links to Agency Policies

Georgia Department of Human Services, [Child Welfare Policy Manual](#) (PDF - 513 KB), see Chapter 10.

Guam

Current Through July 2018

Definitions

Citation: Ann. Code Tit. 19, § 13101

The term 'family' means each legal parent, the grandparents, each parent's spouse, each sibling, or person related by blood up to the second degree or by marriage, each person residing in the same dwelling unit, and any other person or legal entity that is a child's legal or physical custodian or guardian, or who is otherwise responsible for the child's care.

The term 'long-term foster custody' means the legal status created by order of the court after the court has determined by clear and convincing evidence that it is in the best interests of the child to order an appropriate long-term plan concerning the child.

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Ann. Code Tit. 19, § 13321

Long-term foster custody divests from each legal custodian and family member who has been summoned pursuant to § 13306 and vests in a long-term custodian each of the parental and custodial duties and rights of a legal custodian and family member, including, but not limited to, the following:

- To determine where and with whom the child shall live, provided that the child shall not be placed outside Guam without prior approval of the court

- To assure that the child is provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities
- To monitor the provision of appropriate education to the child
- To provide all consents that are required for the child's physical or psychological health or welfare, including, but not limited to, medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs and to provide all consents for any other medical care or treatment, including, but not limited to, surgery if such care or treatment is deemed by two physicians licensed or authorized to practice in Guam to be necessary for the child's physical or psychological health or welfare
- To provide the court with information concerning the child that the court may require at any time

Qualifying the Guardian

This issue is not addressed in the statutes and regulations reviewed.

Procedures for Establishing Guardianship

Citation: Ann. Code Tit. 19, § 13324

If, at the permanency plan hearing, the court finds that it is not reasonably foreseeable that the child's family will be able to provide the child with a safe family home, the court shall order that an appropriate permanency plan be implemented concerning the child. The court shall presume that it is in the best interests of the child to be adopted, unless the child is in the permanent custody of family, or persons who have become as family, and who for good cause are unwilling or unable to adopt the child but are committed to and capable of being the child's permanent custodians.

If the child has reached age 12, the child must be supportive of the permanency plan.

Contents of a Guardianship Order

Citation: Ann. Code Tit. 19, § 13321

Unless otherwise ordered by the court, a child's family member shall retain the following rights and responsibilities after a transfer of long-term foster custody to the extent that the family member possessed that responsibility prior to the transfer of long-term foster custody:

- The right to consent to adoption or marriage
- The continuing responsibility for support of the child, including, but not limited to, repayment for the cost of any and all care, treatment, or any other service supplied or provided by the long-term custodian, any subsequent long-term custodian, other authorized agency, or the court for the child's benefit

A family member may be permitted visitation with the child at the discretion of the court.

An order of long-term foster custody entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, unless and until the child has been legally adopted.

Modification/Revocation of Guardianship

Citation: Ann. Code Tit. 19, § 13321; 13324

If child protective services receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the long-term custodian or custodians of the child, child protective services may automatically assume physical custody of the child. In such event, child protective services shall immediately notify the court and the court shall set the case for a progress hearing within 10 working days from the date that child protective services assumed physical custody of the child, unless the court deems a later date to be in the best interests of the child.

The child may remain in permanent custody until the child is subsequently adopted or reaches age 18. Such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court.

Kinship Guardianship Assistance

This issue is not addressed in the statutes and regulations reviewed.

Links to Agency Policies

Kinship guardianship is not addressed in regulation.

Hawaii

Current Through July 2018

Definitions

Citation: Ann. Stat. § 587A-4; Code of Rules § 17-1621-3.

The term 'hanai relative' means an adult, other than a blood relative, whom the court or Department of Human Services has found by credible evidence to perform or to have performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child.

The term 'relative' means a person related to a child by blood or adoption, or a hanai relative as defined in this chapter, who, as determined by the court or the department, is willing and able to safely provide support to the child and the child's family.

In regulation: The term 'caregiver' means the child's legal guardian(s) or permanent custodian(s).

The term 'legal guardian' means any adult who has been awarded legal guardianship of a child as the result of a judicial determination made at the time the department had placement responsibility of the child.

Purpose of Guardianship

Citation: Code of Rules § 17-1621-9

A caregiver may be awarded legal guardianship of a child for whom the department has placement responsibility when:

- A court has determined that the child cannot be reunified with the legal parents.
- The department has determined that adoption is not a viable goal for the child due to factors that may include, but are not limited to, the child's desire not to be adopted and/or the existence of significant ties to the current caregiver(s) who are unable or unwilling to adopt the child.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 560:5-207; Code of Rules § 17-1621-10

Except as otherwise limited by the court, a guardian of a minor ward has the duties and responsibilities of a parent regarding the ward's support, care, education, health, and welfare. A guardian shall act at all times in the ward's best interests and exercise reasonable care, diligence, and prudence.

In regulation: The legal guardianship shall be a judicially created relationship between the child and relative that is intended to be permanent and self-sustaining, as evidenced by the transfer to the legal guardian of the following parental rights with respect to the child:

- Protection
- Education
- Care and control of the person
- Custody of the person
- Decision-making

Qualifying the Guardian

Citation: Code of Rules § 17-1621-11

The Department of Human Services shall conduct criminal history record checks, child abuse and neglect registry checks, background checks, and any other checks of the prospective legal guardians and other adult household members that are deemed necessary. For each person, this background study shall include the following:

- Fingerprint-based clearances completed by the Federal Bureau of Investigation in accordance with Federal and State statutes and departmental procedures
- Checks of the State's child abuse and neglect registry for all adult household members, including the registries in States where an adult resided within the preceding 5 years

The prospective legal guardians and other adult household members shall not have any of the following:

- A felony conviction, at any time, for child abuse or neglect; spousal abuse; a crime against children (including child pornography); or a serious crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery
- A felony conviction, within the last 5 years, for physical assault, battery, or a drug-related offense
- Convictions of any other crimes that indicate that the person poses a risk to the health, safety, or well-being of children
- An employment history indicating violence, alcohol or drug abuse, and any other violation of employer rule or policy that indicate that the person may pose a risk to the health, safety, or well-being of children

Background information that shows that the person has been confirmed to have committed child abuse or neglect or whose parental rights were terminated may be a basis for denial, unless the department determines that the person has established clear and convincing evidence of rehabilitation and does not pose a risk to the health, safety, or well-being of a child or children in the home.

Procedures for Establishing Guardianship

Citation: Ann. Stat. §§ 560:5-201; 560:5-204; 560:5-206

A person becomes a guardian of a minor by parental appointment or upon appointment by the court.

A minor or a person interested in the welfare of a minor may petition for appointment of a guardian. The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interests, the parents consent to the guardianship, all parental rights have been terminated, or the parents are unwilling or unable to exercise their parental rights.

The court shall appoint as guardian a person whose appointment will be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor has reached age 14, unless the court finds the appointment will be contrary to the best interests of the minor.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 560:5-201

The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

Kinship Guardianship Assistance

Citation: Code of Rules §§ 17-1621-8; 17-1621-9

Federal title IV-E kinship guardianship assistance provides payments to relatives who assume legal guardianship of children for whom they have cared while foster parents. For a guardian to receive assistance, the following provisions apply:

- The child must have been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- The child must have been eligible for title IV-E foster care maintenance payments during a period of at least 6 consecutive months during which the child resided in the home of the prospective relative guardian who was unconditionally licensed as a foster family home.
- The department must determine that:
 - » Return home and adoption have been ruled out as appropriate permanency options.
 - » The child demonstrates a strong attachment to the prospective relative guardian.
 - » The relative guardian has a strong commitment to caring permanently for the child.
- The department must consult with a child who is age 14 or older regarding the kinship guardianship arrangement.

The eligible child and any sibling of the child may be placed in the same kinship guardianship arrangement if the department and the relative agree on the appropriateness of the arrangement for the siblings. Kinship guardianship assistance payments shall be paid on behalf of each sibling so placed, even if the sibling does not meet the eligibility criteria.

A guardian for a child who does not meet the criteria for title IV-E assistance may apply for State-funded permanency assistance.

Links to Agency Policies

Hawaii Administrative Rules, [Chapter 17-1621, Permanency Assistance](#) (PDF - 550 KB)

Hawaii Department of Human Services, [Comparison of Permanency Options](#) (PDF - 66 KB)

Idaho

Current Through July 2018

Definitions

Citation: Ann. Code § 16-2002; Dept. Child Welfare Stds.

The term 'legal custody' means the status created by a court order that vests in a custodian the following rights and responsibilities:

- To have physical custody and control of the child and to determine where and with whom the child shall live
- To supply the child with food, clothing, shelter, and incidental necessities
- To provide the child with care, education, and discipline
- To authorize medical, dental, psychiatric, psychological, and other care and treatment for the child

'Guardianship of the person' means those rights and duties imposed upon a person appointed as guardian of a minor under State law. It includes, but is not necessarily limited to the following:

- The authority to consent to marriage; enlistment in the armed forces of the United States; major medical, psychiatric, and surgical treatment
- The authority to represent the minor in legal actions and to make other decisions concerning the child of substantial legal significance
- The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order
- The rights and responsibilities of legal custody, except when legal custody has been vested in another individual or in an authorized child-placing agency
- The authority to consent to the adoption of the child and to make any other decision concerning the child that the child's parents could make when the parental rights of both parents have been terminated by judicial decree or when there is no living parent

In policy: A 'relative' is a person who is related to a child by blood, marriage, or adoption. This includes a child's grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling.

A 'relative guardian' is a relative who is appointed a child's legal guardian, including a guardianship established by a Tribal court.

Purpose of Guardianship

Citation: Dept. Child Welfare Stds.

When a young person is living with a relative or there are other compelling reasons not to terminate parental rights, legal guardianship can be a good permanent solution. Legal guardianship should be considered when:

- Efforts to reunify the youth with parents have been exhausted and it remains unsafe for the youth to return home.
- A more permanent option, such as adoption, is not feasible.
- The youth is not amenable to adoption.
- The youth is living with a relative who is interested in being a permanent resource for the youth.
- The youth and family do not agree with termination of parental rights and adoption.

A Guardian's Rights and Responsibilities

Citation: Dept. Child Welfare Stds.

A legal guardianship is a relationship that is intended to be permanent and self-sustaining, as evidenced by the transfer to the guardian of the following parental rights with respect to the child:

- Protection
- Education

- Care and control of the person
- Custody of the person
- Decision-making

Qualifying the Guardian”

Citation: Admin. Code §§ 16.06.01.702; 16.06.01.703

The Department of Health and Welfare or its contractor will determine the suitability of an individual to become a legal guardian for a specific child or sibling group through a guardianship study.

To be eligible for a federally funded guardianship assistance payment, all prospective legal guardians and other adult members of the household must receive a criminal history and background check clearance. As a licensed foster parent, if the prospective relative legal guardian has already received a clearance, another check is not necessary.

Procedures for Establishing Guardianship

Citation: Dept. Child Welfare Stds.

A legal guardianship is a judicially created relationship, including one made by a Tribal court, between a child and a relative or nonrelative.

Legal guardianship does not require a termination of parental rights. The legal guardian is awarded legal custody of a child. Because it is mediated by court review, legal guardianship is considered a positive permanency option when adoption is not possible or practical.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Dept. Child Welfare Stds.

If at any time the legal guardian or the child's parent wants to terminate the guardianship, he or she must file a petition and go before a court to have the legal relationship dissolved.

A prospective relative legal guardian may identify a successor legal guardian in the child's IV-E funded guardianship assistance agreement to be appointed guardian of the child should the original guardian die or become incapacitated and unable to care for the child. Successor legal guardians are not required to be relatives but cannot be the child's birth parents. Successor legal guardians and all adults residing in their homes must pass a fingerprint-based criminal history and child protection background check.

A child for whom a successor legal guardian is identified will remain eligible for IV-E relative guardianship assistance benefits in the event of the death or incapacitation of the relative legal guardian. For the benefits to be paid, the successor legal guardian will need to assume guardianship of the child before negotiating a new guardianship assistance agreement.

Kinship Guardianship Assistance

Citation: Admin. Code §§ 16.06.01.702; 16.06.01.703

To receive guardianship assistance, a potential legal guardian must apply for and receive a foster care license.

The Department of Health and Welfare will determine eligibility for guardianship assistance for each child placed in the legal custody of the department prior to the finalization of the guardianship. The child will first be considered for eligibility for a federally funded subsidy. Should the child be found ineligible for a federally funded subsidy, the child will then be considered for a State-funded subsidy.

The following requirements apply to a federally funded guardianship assistance for an eligible child and a relative guardian. A child is eligible for a federally funded guardianship if the child:

- Is age 14 or older sometime during the consecutive 6-month residence with the prospective relative legal guardian
- Has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child

- Cannot be returned home or adopted because it is determined that those are not appropriate permanency options for the child
- Has been eligible for title IV-E foster care maintenance payments during at least 6 consecutive months during which the child resided in the home of the prospective relative legal guardian who was licensed or approved as a foster family home
- Has been consulted regarding the legal guardianship arrangement
- Has demonstrated a strong attachment to the prospective relative legal guardian, and the relative legal guardian has a strong commitment to caring permanently for the child

The department may make guardianship assistance payments in accordance with a guardianship assistance agreement on behalf of each sibling of an eligible child, under age 18, who is placed with the same relative under the same legal guardianship arrangement.

Links to Agency Policies

Idaho Department of Health and Welfare Child Welfare Standards, [Standard for Guardianship Assistance](#) (PDF - 101 KB)

Illinois

Current Through July 2018

Definitions

Citation: Comp. Stat. Ch. 705, §§ 405/1-3; 405/2-27

The term 'legal custody' means the relationship created by a court order in the best interests of the child that imposes on the custodian the responsibility of physical possession of a child and the duty to protect, train, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical care, except as these are limited by residual parental rights and responsibilities and the rights and responsibilities of the guardian of the person, if any.

The term 'subsidized guardianship' means a private guardianship arrangement for children for whom the permanency goals of returning home and adoption have been ruled out and who meet the qualifications for subsidized guardianship as defined by the Department of Children and Family Services in administrative rules.

Purpose of Guardianship

Citation: Admin. Code Tit. 89, § 315.230

Private guardianship may be selected as the permanency goal when the reunification goal and the adoption goal have been ruled out as permanency goals for the child, but the child resides with a relative or foster home caregiver with whom the child has formed an emotional attachment and who is willing to accept legal responsibility for the child and assume a commitment to a permanent relationship that meets the child's needs over time.

A Guardian's Rights and Responsibilities

Citation: Comp. Stat. Ch. 705, § 405/1-3

A person who is granted guardianship of a child has the duty and authority to act in the best interests of the child. Subject to residual parental rights and responsibilities, he or she can make important decisions in matters having a permanent effect on the life and development of the child. The guardian assumes the authority and responsibility for the child's general welfare, and that may include, but is not necessarily limited to the following:

- The authority to consent to marriage; enlistment in the armed forces of the United States; or major medical, psychiatric, and surgical treatment
- The authority to represent the child in legal actions and to make other decisions of substantial legal significance concerning the minor
- The authority and duty of reasonable visitation, except to the extent that these have been limited in the best interests of the child by court order
- The rights and responsibilities of legal custody except where legal custody has been vested in another person or agency
- The power to consent to the adoption of the child, but only if that authority has been expressly conferred on the guardian by the court

Qualifying the Guardian

Citation: Admin. Code Tit. 89, § 302.410

Prior to approving a guardianship arrangement for a child, the department shall determine whether guardianship is in the best interests of the child. In making this determination, the department shall consider all relevant factors, including but not limited to:

- The wishes of the child's prospective guardian and the guardian's demonstrated ability to provide care that meets the special needs of the child, if any
- The wishes of the child who is under age 14 or the consent of the child who is older than age 14
- The interaction and interrelationship between the child and the prospective guardian
- The child's adjustment to the present home, school, and community
- The child's need for stability and continuity of relationship with the prospective guardian
- The mental and physical health of all individuals involved

The department shall ensure that the guardianship arrangement is a safe and suitable placement by means of safety checks, including criminal history and child abuse and neglect registry checks.

Procedures for Establishing Guardianship

Citation: Comp. Stat. Ch. 705, § 405/2-27

If the court determines that the parents of a child who is a ward of the court are unfit or are unable to care for, protect, train, or discipline the child or are unwilling to do so, for some reason other than financial circumstances alone, and that the health, safety, and best interests of the child will be jeopardized if he or she remains in the custody of his or her parents, the court may place the child in the custody of a suitable relative or other person as legal custodian or guardian or, with the approval of the Department of Children and Family Services, place the child in the subsidized guardianship of a suitable relative or other person as legal guardian.

The court also shall consider whether, based on health, safety, and the best interests of the child:

- Appropriate services aimed at family preservation and family reunification have been unsuccessful in rectifying the conditions that have led to a finding of unfitness or inability to care for, protect, train, or discipline the child.
- No family preservation or family reunification services would be appropriate.

Upon a determination, established by clear and convincing evidence, that the parent is an unfit person, the court shall, when appropriate and in the best interests of the child, enter an order terminating parental rights and appointing a guardian with power to consent to adoption.

Contents of a Guardianship Order

Citation: Comp. Stat. Ch. 705, § 405/2-27

The clerk of the court shall issue a certified copy of the order of court to the legal custodian or guardian of the person, as proof of his or her authority. No other process is necessary as authority for the keeping of the child.

Modification/Revocation of Guardianship

Citation: Comp. Stat. Ch. 705, § 405/2-27

Custody or guardianship granted under this section continues until the court directs otherwise.

Kinship Guardianship Assistance

Citation: Comp. Stat. Ch. 325, § 42/10; Admin. Code Tit. 89, § 302.410

The Kinship Navigator shall be statewide and coordinated among the Department of Human Services, Department on Aging, Illinois Housing Authority, Department of Children and Family Services, Department of Corrections, and Federal and local governments, as well as other public and private sources.

Additional services provided under the Kinship Navigator shall include organizing diverse and culturally conscious kinship support groups and counseling; assisting with applying for benefits for those who qualify; publishing monthly newsletters; coordinating respite and crisis care services; assisting kinship caregivers with job readiness, job search, and job retention; and providing technical assistance to start up kinship support groups.

In regulation: The subsidized guardianship program provides assistance payments to grandparents and other relatives who have assumed the legal guardianship of children for whom they have cared as a licensed foster parent and for whom they have committed to care on a permanent basis.

For a child to qualify for a federally funded subsidized guardianship, the following criteria must be met:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the child's welfare.
- The child must be eligible for foster care maintenance payments while residing for at least 6 consecutive months in the home of a licensed prospective relative guardian immediately prior to the establishment of the guardianship.
- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective relative guardian and the relative guardian has a strong commitment to caring permanently for the child.
- If the child is at least age 14, the child has been consulted and has agreed to the guardianship arrangement.

Links to Agency Policies

Illinois Administrative Code, [Title 89, § 302.410](#)

Indiana

Current Through July 2018

Definitions

Citation: Ann. Code § 29-3-1-6

The term 'guardian' means a person who is a fiduciary and is appointed by a court to be a guardian or conservator responsible as the court may direct for the person or the property of a minor. The term includes a temporary guardian, a limited guardian, and a successor guardian but excludes one who is only a guardian ad litem. The terms 'guardian' and 'conservator' are interchangeable.

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Ann. Code §§ 31-34-21-7.5; 29-3-8-2

The legal guardian appointed under this section is a caregiver in a judicially created relationship between the child and caregiver that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver of the following parental rights with respect to the child:

- Care, custody, and control of the child
- Decision-making concerning the child's upbringing

The guardian of a child may exercise all of the powers required to perform the guardian's responsibilities, including the following:

- The power to take custody of the child and establish the child's place of abode within or without Indiana
- The power to consent to medical or other professional care and treatment for the child's health and welfare
- The power to consent to the marriage or adoption of the child

Qualifying the Guardian

Citation: Ann. Code §§ 29-3-5-1.5; 31-34-21-7.5; Admin. Code Tit. 465, § 2-8-3

A petitioner for appointment as a guardian of a minor shall submit the necessary information, forms, or consents for the Department of Child Services to conduct a criminal history check of the petitioner and any other household members before the court appoints the guardian.

The juvenile court may not approve a placement with a legal guardian if a person who is currently residing with the proposed legal guardian has committed an act resulting in a substantiated report of child abuse or neglect, has a juvenile adjudication for an act that would be a felony listed in § 31-27-4-13 if committed by an adult, or has a conviction for a felony listed in that section.

In regulation: The guardian must meet each of the following criteria, as shown by a home study and an evaluation of the guardian:

- Have the ability to provide for the child's physical, mental, emotional, educational, and psychological needs, upon termination of supervision of the child by the department, except for provision of assistance
- Have the ability, willingness, and motivation to access and obtain appropriate services outside the home that are necessary or appropriate for the health, education, development, and well-being of the child and that will assist the child in becoming a self-supporting adult to the maximum extent feasible
- Have established a nurturing, stable relationship with the child in which the child indicates a desire to continue a family relationship and residence with the guardian in the guardian's household
- Have demonstrated the ability to determine and regulate an appropriate level of relationship and ongoing contacts with any parent or other close relative of the child, consistent with the safety and best interests of the child, and in conformance with any plan of visitation ordered or approved by the court

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 29-3-5-1; 29-3-6-1

Any person may file a petition for the appointment of a person to serve as guardian for a child under this chapter. After the filing of a petition, the court shall set a date for a hearing on the issues raised by the petition. A court shall notify the department of a hearing regarding the guardianship of a child under this section, if a child in need of services petition has been filed regarding the child. The department may participate in a hearing regarding the guardianship of a child described in this subsection.

If the subject of the petition is a child, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

- The child if he or she is at least age 14, unless the child has signed the petition
- Any living parent of the child, unless parental rights have been terminated by a court order
- Any person alleged to have had the principal care and custody of the child during the 60 days preceding the filing of the petition
- Any other person that the court directs

Contents of a Guardianship Order

Citation: Ann. Code § 29-3-8-9

The court may include in its order creating a guardianship of a child the following:

- A requirement that the child must reside with the guardian until the guardianship is terminated or modified
- Any terms and conditions that a parent must meet in order to seek modification or termination of the guardianship

Modification/Revocation of Guardianship

Citation: Ann. Code § 29-3-8-9

The court may modify or terminate the guardianship only if the parent complies with the terms and conditions and proves the parent's current fitness to assume all parental obligations by a preponderance of the evidence.

If a petition is filed for modification, resignation, removal of the guardian, or termination of the guardianship before the parent complies with the court-ordered terms and conditions described above, and the child was the subject of a petition alleging the child to be a child in need of services, the court shall refer the petition to the Department of Child Services for the department to determine the placement of the child in accordance with the best interests of the child.

A court shall notify the department:

- If the court appoints a guardian for a child who was the subject of a petition alleging the child to be a child in need of services, and if a petition to modify or terminate the guardianship of the child or a petition regarding the death, resignation, or removal of the guardian is filed
- Of any hearings related to the petitions

If a child was the subject of a petition alleging the child to be a child in need of services, the court shall do the following at a hearing regarding a petition filed under this section:

- Consider the position of the department

- If requested by the department, allow the department to present evidence regarding the following:
 - » Whether the guardianship should be modified or terminated
 - » The fitness of the parent to provide for the care and supervision of the child at the time of the hearing
 - » The appropriate care and placement of the child
 - » The best interests of the child

Kinship Guardianship Assistance

Citation: Admin. Code Tit. 465, §§ 2-8-2; 2-8-3; 4-2-19

A child who meets all the following criteria shall be eligible for assistance:

- The child is at least age 13, a member of a sibling group in which at least one of whom is at least age 13, seriously disabled, or approved for legal guardianship as a permanency plan by order of a court.
- The child must be residing in the household of an adult relative caregiver.
- The gross family income attributable to the child must be less than 250 percent of the Federal poverty level.
- The child must have been adjudicated as a child in need of services by a juvenile court.
- The child must have been removed from the child's home and placed in another home, under supervision of a county office, pursuant to a dispositional decree.
- The child must be residing with a guardian who meets the eligibility requirements specified below.
- The child must have resided with the guardian for a continuous period of at least 6 months.
- The permanency plan for the child is appointment of a legal guardian for the child.

A guardian who meets all the following criteria shall be eligible to receive assistance on behalf of a child who is eligible for assistance:

- The guardian must be a relative of the child.
- The guardian must reside in a home that meets all requirements for licensing as a foster family home.
- The child must have resided in the guardian's home for a continuous period of at least 6 months.
- The guardian must be primarily responsible for providing for appropriate care, support, maintenance, education, and welfare of the child.

Guardianship assistance may include any of the following:

- Title IV-E or State guardianship assistance
- Health insurance, including either Medicaid or the children's health insurance program
- Reimbursement for nonrecurring guardianship expenses, including guardianship fees, court costs, attorney fees, and other expenses directly related to the creation of the guardianship

Links to Agency Policies

Indiana Department of Child Services, *Child Welfare Policies*, [Chapter 14, Guardianship Assistance Program](#)

Iowa

Current Through July 2018

Definitions

Citation: Pol. Man. Tit. 13, Ch. D(1)

The term 'guardian' means a person who is not the parent of a child but who has been appointed by the court or juvenile court that has jurisdiction over the child to have a permanent self-sustaining relationship with the child, to make important decisions that have a permanent effect on the life and development of that child, and to promote the general welfare of that child.

Purpose of Guardianship

Citation: Pol. Man. Tit. 13, Ch. D(1)

Guardianship offers more permanency than long-term foster care but less permanency than a return to the child's parents or adoption. When parents are unable to provide daily care for their children, and adoption is not warranted, guardianship can keep children rooted, empower families, and provide permanence for children.

Placement with a legal guardian may be appropriate if a child is unlikely to return home in the foreseeable future and adoption is not possible because of any of the following:

- The child will not consent to adoption.
- Parental rights cannot be terminated.
- The child continues to benefit from the relationship with the birth family.
- Potential guardians are not willing to adopt the child, even though there is a strong and beneficial emotional bond between them.

The recommendation of guardianship as the child's permanency goal is appropriate when guardianship will assure the child's safety and is consistent with the well-being and permanency needs of the child. Guardianship may be in the child's best interests if the following factors have been considered:

- The wishes of the child's prospective permanent legal custodian
- The wishes of the child age 10 or older
- The interaction and interrelationship of the child with the birth parents, when applicable, and the prospective permanent legal custodian
- The child's adjustment to the present home, school, and community
- The child's need for stability and continuity of relationships
- The mental and physical health of all individuals involved

A Guardian's Rights and Responsibilities

Citation: Pol. Man. Tit. 13, Ch. D(1)

Unless otherwise enlarged or circumscribed by a court having jurisdiction over the child or by operation of law, the right and duties of a guardian with respect to a child are as follows:

- To consent to marriage; enlistment in the armed forces of the United States; or medical, psychiatric, or surgical treatment
- To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or another person has been appointed guardian ad litem
- To serve as custodian, unless another person has been appointed custodian
- To make periodic visits if the guardian does not have physical possession or custody of the child
- To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed
- To make other decisions involving protection, education, and care and control of the child
- Make an annual report to the court

Qualifying the Guardian

Citation: Pol. Man. Tit. 13, Ch. D(1)

A potential guardian for a child may be the child's foster (resource) parent, a relative, or a nonrelated person with whom the child has a relationship. The following factors must be considered when determining the appropriateness of a person to be a child's guardian:

- The best interests of the child
- The potential guardian's ability to nurture the child
- The degree of the potential guardian's commitment to the long-term care of the child
- The potential guardian's understanding of the role expected and attitude toward the child's family
- The results of records checks
- A home study, unless the potential guardian is a licensed foster parent or adoptive parent
- A home visit to determine the safety and stability of the home (if not previously done)
- A financial statement by the family to determine the family's financial means to care for additional children
- Three references provided by the family, with the ability to also check three unsolicited references if needed

Criminal records checks, as well as checks of the central abuse registry and the sex offender registry, must be completed on anyone in the potential guardian's home who is aged 14 or older. If a home study has been done, and records checks were obtained through the study, checks do not need to be completed.

If any person in the prospective guardian's household has a record of founded abuse, a criminal conviction, or placement on the sex offender registry, the home shall not be approved for the child's placement, unless an evaluation of the abuse or criminal conviction determines that the abuse or crime does not warrant prohibiting the placement of the child.

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 232.104; Pol. Man. Tit. 13, Ch. D(1)

During a permanency hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. After a permanency hearing, the court may enter an order to transfer guardianship and custody of the child to a suitable person.

Prior to entering a permanency order for guardianship, convincing evidence must exist showing that all of the following apply:

- A termination of the parent-child relationship would not be in the best interests of the child.
- Services were offered to the child's family to correct the situation that led to the child's removal from the home.
- The child cannot be returned to the child's home.

In policy: The Department of Human Services must submit a recommendation for guardianship to the court that includes clear and convincing evidence that:

- Services were offered to the child's family to correct the situation that led to the child's removal.
- The child cannot be returned home.
- Adoption would not be a viable permanency option.
- The birth parents support the guardianship recommendation.
- The child is not in need of child welfare services.
- The family team meeting recommendation is for guardianship.
- The child has been living with the prospective guardian for the last 6 months.
- The prospective guardian has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child's care.
- The assessment of the prospective guardian shows that the guardian can meet the needs of the child and that his or her home is safe and stable.
- Guardianship is in the best interests of the child.

Contents of a Guardianship Order

Citation: Ann. Stat. § 232.104; Pol. Man. Tit. 13, Ch. D(1)

Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interests of the child.

In policy: Residual parental rights and responsibilities are not affected by guardianship. However, the court can define or limit the rights of the child's parents through the guardianship order. Rights that may be affected include visitation, consent to adoption, support, and lines of inheritance.

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 232.104

Following a permanency hearing and the entry of a permanency order that places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interests of the child are being served. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

Kinship Guardianship Assistance

Citation: Admin. Code Tit. 441, §§ 204.1; 204.2

This chapter implemented a 5-year demonstration waiver project for a subsidized guardianship program to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home.

The guardian named in a permanency order under § 232.104 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:

- The child has a documented permanency goal of long-term foster care, guardianship, or another planned permanent living arrangement.
- The child has been in a licensed foster care placement and has lived in foster care for at least 6 of the last 12 months.
- The child is either:
 - » Age 14 or older and consents to the guardianship
 - » Age 12 or older and guardianship has been determined to be in the child's best interests
 - » Under age 12 and part of a sibling group with a child aged 12 or older
- The child has lived in continuous placement with the prospective guardian for the 6 months before initiation of the guardianship subsidy.
- The guardian is a person who has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child's care.
- The child has been randomly selected to participate in the waiver demonstration project.

The guardian may be a relative or nonrelative. Placement with that guardian must be in the best interests of the child. The best-interest determination must be documented in the case file.

The subsidized guardianship applicant or recipient need not reside in Iowa.

Links to Agency Policies

Iowa Department of Human Services, *Employee's Manual*, [Title 13, Chapter D\(1\), Subsidized Guardianship](#) (PDF - 133 KB)

Iowa Foster & Adoptive Parents Association, [Kinship Caretakers: How to Navigate Iowa's Child Welfare System](#) (PDF - 1,165 KB)

Kansas

Current Through July 2018

Definitions

Citation: Ann. Stat. § 38-2202

The term 'custody,' whether temporary, protective, or legal, means the status created by court order or statute that vests in a custodian, whether an individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

'Kinship care placement' means the placement of a child in the home of the child's relative or in the home of an adult with whom the child or the child's parent already has close emotional ties.

The term 'permanency goal' means the outcome of the permanency-planning process, which may be reintegration, adoption, appointment of a permanent custodian, or another planned permanent living arrangement.

The term 'permanent custodian' means a judicially approved permanent guardian of a child pursuant to § 38-2272.

Purpose of Guardianship

Citation: Pol. & Proc. Man. § 3231

For youth for whom the court has determined that reintegration and adoption are not viable permanency options, permanent custodianship provides the child with the next preferable goal. Permanent custodianship enables the caregiver to exercise all the rights and responsibilities of a parent without the on-going oversight of the Department for Children and Families. Custodianship may be an option for youth with or without the termination of parental rights.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 38-2272

Subject to limitations included in the custodianship order, a permanent custodian shall stand in loco parentis and shall exercise all of the rights and responsibilities of a parent except the permanent custodian shall not:

- Consent to an adoption of the child
- Be subject to court-ordered child support or medical support

Unless there has been a judicial finding of unfitness or court-ordered limitations, a permanent custodian may share parental responsibilities with a parent of the child as the permanent custodian determines is in the child's best interests. Sharing parental responsibilities does not relieve the permanent custodian of legal responsibility for the child.

If a permanent custodian is appointed after a judicial finding of parental unfitness without a termination of parental rights, the parent shall retain only the obligation to pay child support and medical support, the right to inherit from the child, and the right to consent to adoption of the child. All other parental rights transfer to the permanent custodian.

If a permanent custodian is appointed after termination of parental rights, the parent retains no right or responsibilities to the child.

Qualifying the Guardian

Citation: Ann. Stat. §§ 38-2272; 59-2132

Prior to appointing a permanent custodian, the court shall receive and consider an assessment of any potential permanent custodian as provided in § 59-2132. In making an order appointing a permanent custodian, the court shall give preference, to the extent that the court finds it in the child's best interests, first to appointing a permanent custodian who is a relative of the child and second to a person with whom the child has close emotional ties.

In making the assessment, the person authorized to perform assessments or the Department for Children and Families is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, and clarify any genetic and medical history filed with the petition. The assessment also must include checking the name of the petitioner with the child abuse and neglect registry through the department and, when appropriate, with a similar registry in another State or nation. Criminal history checks are required for determining whether the petitioner has been convicted of a felony for any act described in articles 54, 55, or 56 of chapter 21 of the Kansas Statutes or §§ 21-6104, 21-6325, 21-6326, or 21-6418 through 21-6422; of a felony violation of article 57 of chapter 21 of the Kansas Statutes within the last 5 years; or any felony violation of any provision of the uniform controlled substances act.

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 38-2272

A permanent custodian may be appointed:

- With the consent and agreement of the parents and approval by the court
- After a finding of parental unfitness pursuant to § 38-2269
- After termination of parental rights

Upon the appointment of a permanent custodian, the department's custody of the child shall cease. The court's jurisdiction over the child shall continue unless the court enters an order terminating jurisdiction.

Parental consent to the appointment of a permanent custodian shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the consent is acknowledged before a judge, it shall be the duty of the court to advise the consenting parent of the consequences of the consent, including the following:

- Do you understand that your parental rights are not being terminated and you can be ordered to pay child support and medical support for your child?
- Do you understand that to keep your rights, you must keep the court up to date about how to contact you?
- Do you understand that if your child is ever placed for adoption, the court will try to let you know by using the information you have given them?
- Do you understand that if you want information about your child's health or education, the court will send the information to the latest address the court has?
- Do you understand that you may be able to have some contact with your child, but only if the permanent custodian decides it is in the child's best interests and if the court allows the contact?
- Do you understand that unless the court orders differently, the permanent custodian has the right to make the following decisions about your child's care and consent to the child's marriage, medical treatment, mental health treatment, and make other critical health-care decisions?

Contents of a Guardianship Order

Citation: Ann. Stat. § 38-2272

When the court retains jurisdiction after appointment of a permanent custodian, the court, in its order, may impose limitations or conditions upon the rights and responsibilities of the permanent custodian including, but not limited to, the right to:

- Determine contact with the biological parent
- Consent to marriage; psychosurgery, removal of a bodily organ, or amputation of a limb; sterilization; behavioral and medical experiments; withholding life-prolonging medical treatment; placement in a treatment facility; or placement in a psychiatric hospital or an institution for the developmentally disabled

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 38-2272

A parent's consent to custodianship is final when executed, unless the parent whose consent is at issue, prior to issuance of the order appointing a permanent custodian, proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with that parent.

Kinship Guardianship Assistance

Citation: Pol. & Proc. Man. § 6111

Children may be considered for a permanent custodianship subsidy if they are age 14 or older, are part of a sibling group that has one child age 14 or older who are being placed together, or have other extenuating circumstances that make adoption not a reasonable option.

The permanent custodianship subsidy is not an entitlement program, and the child must meet all of the following criteria:

- The child is in the custody of the department with or without parental rights terminated at the time permanent custodianship is established.
- A court has issued an order appointing a permanent custodian.
- The child is not receiving Supplemental Security Income benefits.
- The permanent custodian meets eligibility to receive Temporary Assistance for Families.

Links to Agency Policies

Kansas Department for Children and Families, [Policy and Procedure Manual](#), click on '6000, Permanent Custodianship & Adoption'

Kentucky

Current Through July 2018

Definitions

Citation: Rev. Stat. § 600.020; Admin. Regs. Tit. 922, § 1:130

The term 'fictive kin' means an individual who is not related by birth, adoption, or marriage to a child but who has an emotionally significant relationship with the child.

In regulation: The term 'caretaker relative' means a relative with whom the child is, or shall be, placed by the cabinet and who is seeking to qualify as a kinship caregiver. A 'kinship caregiver' is the qualified caregiver relative of a child with whom the child is placed by the cabinet as an alternative to foster care.

Purpose of Guardianship

Citation: Admin. Regs. Tit. 922, § 1:140

The permanency goal for a child in the custody of the cabinet shall be legal guardianship if the cabinet determines that:

- Return to the parent or adoption is not in the child's best interests.
- There is an identified adult willing to seek legal guardianship of this child.
- Legal guardianship by the identified adult is in the child's best interests.

Legal guardianship shall be requested pursuant to Rev. Stat. § 387.025.

A Guardian's Rights and Responsibilities

This issue is not addressed in the statutes and regulations reviewed.

Qualifying the Guardian

Citation: Admin. Regs. Tit. 922, § 1:130

The caregiver relative of the child and each adult member of the household shall undergo a criminal records check and a child abuse and neglect check conducted by the cabinet. Each adolescent household member of the caregiver relative's home shall undergo a child abuse and neglect check.

The caregiver relative and each household member shall agree to undergo a relative home evaluation. During a relative home evaluation, the cabinet shall consider the caregiver relative's understanding of the impact that familial abuse, neglect, or substance abuse may have on a child and the child's extended family and their willingness and ability to:

- Protect the child from abuse or neglect
- Assume permanent custody
- Participate in the child's case permanency plan
- Access transportation, telephone, medical services, first aid supplies, and school
- Provide full-time care
- Accommodate for the child within the home, including:
 - » Providing for the child's sleeping and eating
 - » Maintaining adequate heat and ventilation in the home
 - » Using active smoke detectors in the home
 - » Assuring the child's inaccessibility to medication, alcoholic beverages, poisonous substances, cleaning materials, ammunition, firearms, and unsupervised contact with a birth parent

Procedures for Establishing Guardianship

Citation: Rev. Stat. §§ 387.025; 387.032

Any interested person or entity may petition the district court for the appointment of a guardian for an unmarried minor. The petition for appointment shall include the following:

- The name and address of the minor
- The date of birth of the minor
- The name and address of the minor's spouse, if any
- The names and addresses of the minor's parents or, if the minor has no living parent, the names and addresses of the minor's adult next of kin
- The name and address of the individual or facility having custody of the minor
- The facts and reasons supporting the need for a guardianship for the minor
- The name and address of the petitioner
- The name and address of the petitioner's attorney, if any
- The name and address of the person or entity desiring appointment as guardian

The petition shall be accompanied by a verified application of the person or entity desiring appointment as guardian.

The application shall set forth the following:

- The name, address, and age of the applicant
- The applicant's relationship to the minor, if any
- Whether or not the applicant has ever been convicted of a crime
- The applicant's qualifications to serve as guardian

The court shall appoint a time for hearing the petition and application. Notice of the time and place of the hearing shall be given no less than 5 days prior to the hearing to the minor, if the minor is older than age 14, and to each of the persons or entities required to be named in the petition.

In appointing a guardian, the court shall appoint any person or entity whose appointment would be in the best interests of the minor.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Admin. Regs. Tit. 922, § 1:130

To the extent funds are available, the cabinet may consider a child for initial eligibility in the kinship care program if the cabinet:

- Determines that the child is at risk of removal from the child's home with the child's biological or adoptive parent and would otherwise be placed in foster care, or is in the custody of the cabinet and residing in foster care due to:
 - » A cabinet investigation that resulted in a substantiation of abuse or neglect within 120 calendar days of placement in the home of the caregiver relative and prior to April 1, 2013
 - » The death of both parents
- Places the child with a caregiver relative prior to April 1, 2013, due to abuse or neglect or the death of both parents

Kinship care program benefits shall be available to a child who was placed by the cabinet with a nonparental relative in accordance with this administrative regulation and whose initial eligibility determination for the kinship care program took place prior to April 1, 2013.

Links to Agency Policies

Kentucky Administrative Regulations, [922 KAR 1:130, Kinship Care Program](#) (PDF - 166 KB)

Louisiana

Current Through July 2018

Definitions

Citation: Ch. Code Art. 116

The term 'guardianship' means the judicial placement of a child under the care of a person who will have the duty and authority of a guardian to make decisions in matters having a permanent effect on the life and development of the child, as set forth in article 719.

'Legal custody' means the right to have physical custody of the child and to determine where and with whom the child shall reside; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical, psychiatric, and surgical treatment; and to provide the child with food, shelter, education, and ordinary medical care, all subject to any residual rights possessed by the child's parents.

Purpose of Guardianship

Citation: Ch. Code Art. 718

The purpose of guardianship is to provide a permanent placement for children when neither reunification with a parent nor adoption has been found to be in their best interests; to encourage stability and permanence in the lives of children who have been adjudicated to be in need of care and have been removed from the custody of their parent; and to increase the opportunities for the prompt permanent placement of children, especially with relatives, without ongoing supervision by the department.

This chapter is intended to ensure that the fundamental needs of children are met and the constitutional rights of all parties are recognized and enforced.

A Guardian's Rights and Responsibilities

Citation: Ch. Code Art. 719

Unless the court specifies otherwise, a guardian shall exercise the rights and responsibilities of legal custody and shall have the authority to consent to the child's marriage, to consent to his or her enlistment in the armed forces of the United States, and to make other decisions concerning the child, except the right to consent to the child's adoption.

Qualifying the Guardian

Citation: Ch. Code Art. 721

The Department of Children and Family Services shall submit to the court a confidential report of its investigation and evaluation of the home of the proposed guardian. The report shall include all of the following:

- The moral and financial fitness of the proposed guardian
- The conditions of the home of the proposed guardian with respect to health, adjustment, and other advantages or disadvantages for the child
- The physical and mental condition of the child and his or her reaction to the proposed guardianship
- The plan for the child if the proposed guardian becomes incapable of providing care

Procedures for Establishing Guardianship

Citation: Ch. Code Art. 720; 722

After a child has been adjudicated to be in need of care, a motion for guardianship may be filed by the department, parent, or counsel for the child; or, when the guardian is deceased, an individual previously named as a successor guardian in a guardianship subsidy agreement with the department; or the department may submit a case plan along with the case review report to the court and all counsel recommending guardianship.

The motion, case review report, or case plan shall include all of the following:

- The child's name, gender, and date and place of birth
- A description of the child's mental and physical health
- The current placement of the child and when it began
- The name and address of the proposed guardian and any relationship to the child
- The name and address of the child's parents
- A plain and concise statement of the facts on which the motion, case review report, or case plan for guardianship is sought and why neither adoption nor reunification with a parent is in the child's best interests

The home study shall be attached to the petition unless it has not been completed.

The petitioner shall have the burden of proving all of the following by clear and convincing evidence:

- The child has been adjudicated to be in need of care.
- Neither adoption nor reunification with a parent is in the best interests of the child.
- The child has resided with the proposed guardian for at least 6 months, unless the court waives the residence requirement for good cause.
- The proposed guardian is able to provide a safe, stable, and wholesome home for the child for the duration of minority.

If the child is age 12 or older, the court shall solicit and consider his or her wishes in the matter.

The court shall hold a hearing before approving a guardianship and shall, at the conclusion of the hearing, enter a written order that includes the findings upon which the order is based.

Contents of a Guardianship Order

Citation: Ch. Code Art. 723

The court may grant the motion and appoint a guardian for the child if the court finds by clear and convincing evidence that the requirements of article 722 have been met and that the proposed guardianship is in the best interests of the child.

The guardianship order shall address the frequency and nature of visitation or contact between the child and his or her parent, as necessary to ensure the health, safety, and best interests of the child. The guardianship order may require the parent to contribute to the support of the child to the extent the court finds the parent is able pursuant to article 685.

The guardianship order continues until the child reaches age 18, unless earlier modified or terminated by the court in accordance with article 724.

Modification/Revocation of Guardianship

Citation: Ch. Code Art. 724

The court shall retain jurisdiction to enforce, modify, or terminate a guardianship order until the child reaches age 18. The program representing the child in the child of need of care proceedings pursuant to Children's Code Article 607 and the program representing the indigent parents in the child in need of care proceedings pursuant to Children's Code Article 608 shall provide representation in guardianship proceedings.

Any of the following parties may seek to enforce, modify, or terminate a guardianship order:

- The department
- Counsel for the child
- The guardian or, if the guardian is incapacitated, an individual previously named as a successor guardian by the guardian in a guardianship subsidy agreement with the department
- A parent permitted to intervene under article 707
- The court on its own motion

A guardianship order may be modified or terminated if the court finds by clear and convincing evidence that there has been a substantial and material change in the circumstances of the guardian or child because of any of the following:

- The guardian no longer wishes to serve or can no longer serve as guardian of the child.
- Continuation of the guardianship is so deleterious to the child as to justify a modification or termination of the relationship, or the harm likely to be caused from a change in the guardianship is substantially outweighed by the advantages to the child of the modification.

The court shall hold a hearing before modifying or terminating a guardianship and shall, at the conclusion of the hearing, enter a written order that includes the findings upon which the order is based.

Kinship Guardianship Assistance

Citation: Admin. Code Tit. 67, Part V, § 4101

The Subsidized Guardianship Program enables the department to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve permanency outside of agency custody because of special needs or other circumstances. Subsidy payments shall be limited to a child for whom guardianship is indicated due to other more permanent options such as reunification with the parents, unsubsidized custody to a relative or other caregiver, or adoption is determined to be unfeasible.

The guardianship subsidy applies only:

- To a child for whom the department holds legal custody
- To potential caregivers with whom the child had an established familial or emotional relationship prior to entering department custody
- When the kinship placement provider becomes a certified foster caregiver
- When the child remains in the certified kinship placement for at least 6 consecutive months

The prospective guardianship family must meet basic foster care certification eligibility requirements in all respects, except for the ability to assume complete financial responsibility for the child's care.

The child may be subsidized for the following services up to age 18:

- The maintenance subsidy to cover basic living expenses such as board, room, clothing, spending money, and ordinary medical costs
- The special board rate, available to guardians who were foster parents for a foster child for whom a special board rate was received during foster care, if the subsidy continues to be necessary to meet the child's needs
- The special services subsidy, time-limited special assistance for an anticipated expense, including special medical costs, ongoing therapeutic treatment, or legal and court costs, when no other family or community resource is available
- Eligibility for Medicaid coverage up to age 18

Links to Agency Policies

Louisiana Administrative Code, [Title 67](#), click on § 4101.

Maine

Current Through July 2018

Definitions

Citation: Rev. Stat. Tit. 18-C, § 1-201; Pol. Man. Ch. V. § D-7

Effective July 1, 2019: The term 'guardian' means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse or by the court. The term 'guardian' includes a limited, an emergency, and a temporary substitute guardian but not a guardian ad litem.

In policy: 'Relative placement' refers to the use of relatives as a temporary placement for children in the custody of the Department of Health and Human Services, or comparable departments in another State through the Interstate Compact on the Placement of Children, while the children/parent(s) are engaged in the rehabilitation/reunification process.

'Kinship care' is the placement of a child with relatives on a permanent basis once the court or the family has determined that the child will not be returning to the home and care of the parent(s). Temporary relative placements can evolve into kinship care.

Purpose of Guardianship

Citation: Code of Rules 10 148 012, § 1

Permanency guardianship provides a permanency option to children who might otherwise remain in foster care until the age of majority. The State has developed a comprehensive program to provide relatives and other individuals the opportunity to become the permanency guardians of children that are in the custody of the State or of Tribal authorities in the State of Maine. Through the provision of a financial subsidy, the State seeks to promote the utilization of guardianship and improved permanency outcomes for children in out-of-home placement.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. Tit. 22, § 4038-C; Tit. 18-C, §§ 5-207; 5-208

Effective July 1, 2019: A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to title 18-C, §§ 5-207 and 5-208.

Except as otherwise limited by the court, a guardian of a minor has the duties and responsibilities of a parent regarding the minor's support, care, education, health, and welfare. A guardian shall act at all times in the best interests of the minor and exercise reasonable care, diligence, and prudence.

A guardian may do any of the following:

- Apply for and receive money for the support of the minor otherwise payable to the minor's parent under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship
- Take custody of the minor and establish the minor's place of custodial dwelling, but may establish or move the minor's custodial dwelling outside the State only upon express authorization of the court
- Consent to medical or other care, treatment, or service for the minor
- Consent to the marriage of the minor
- If reasonable under all of the circumstances, delegate to the minor certain responsibilities for decisions affecting the minor's well-being

The court may specifically authorize the guardian to consent to the adoption of the minor.

If coguardians are appointed, the powers of the guardians are joint and several, unless limited by the appointing document.

Qualifying the Guardian

Citation: Rev. Stat. Tit. 22, § 4038-C

The court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:

- Has the ability to provide a safe home for the child
- Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian
- Is willing and able to make an informed, long-term commitment to the child

- Has the skills to care for the child
- Has submitted to having fingerprints taken for the purposes of a national criminal history record check

Procedures for Establishing Guardianship

Citation: Rev. Stat. Tit. 22, § 4038-C; Tit. 18-C, §§ 5-204; 5-205

Effective July 1, 2019: As part of the permanency plan, the court may appoint a person or persons as guardian of a child, to be known as a permanency guardian.

The court may appoint a guardian for a minor if the court finds the appointment is in the best interests of the minor; the proposed guardian is suitable; that the parents consent; that all parental rights have been terminated; or by clear and convincing evidence that the parents are unwilling or unable to exercise their parental rights, including, but not limited to, either of the following:

- The parent is currently unwilling or unable to meet the minor's needs and that will have a substantial adverse effect on the minor's well-being if the minor lives with the parent.
- The parent has failed, without good cause, to maintain a parental relationship with the minor, including, but not limited to, failing to maintain regular contact with the minor for a length of time that evidences an intention to abandon the minor.

After a hearing, the court shall make the appointment of a guardian if the court finds that venue is proper, the required notices have been given, the conditions listed above have been met, and the best interests of the minor will be served by the appointment. The court shall appoint a person or persons nominated by the minor, if the minor has reached age 14.

If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the choice of the minor if the minor has reached age 14.

Contents of a Guardianship Order

Citation: Rev. Stat. Tit. 18-C, § 5-206; Tit. 22, § 4038-C

Effective July 1, 2019: An order appointing a guardian of a minor must include the following:

- The reasons for the appointment of the guardian
- The powers and duties granted to the guardian
- The rights and responsibilities retained by the parent
- The anticipated duration of the appointment
- A description of the process and standards for modification and termination
- Notice of the court's authority to hold a hearing and find that a party has violated a part of the order and is in contempt and to order relief to the other party for the violations or contempt

An order appointing a guardian of a minor must specify whether the minor's parent retains any of the following rights and responsibilities after the appointment and, if any such rights or responsibilities are not retained, the reasons they are not retained:

- A schedule of parent-child contact or a determination by the court that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor
- Access to records and information regarding the minor
- Parental rights and responsibilities as described under title 19-A, § 1501(5)
- Child support

A parent, grandparent, or sibling of a child subject to a permanency guardianship, or to a proceeding to establish a permanency guardianship, may petition the court to determine rights of contact. If the court determines that it is in the best interests of the child, it may order that the parent, grandparent, or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration, and conditions of that contact.

Modification/Revocation of Guardianship

Citation: Rev. Stat. Tit. 22, § 4038-C; Title 18-C, § 5-210

Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent, or sibling of the child may petition the court to establish rights of contact with the child. However, a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare.

The permanency guardianship may be terminated only if the petitioner proves by a preponderance of evidence that the termination is in the best interests of the child.

Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies, or becomes incapacitated, the court shall hold a judicial review and a permanency-planning hearing at the earliest practicable time.

Effective July 1, 2019: A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor, or the minor who is age 14 or older may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interests of the minor as circumstances require. Unless the motion specifies that it is filed with the consent of all parties entitled to notice, the matter must be set for a hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interests of the minor and the parents' rights.

A guardianship of a minor terminates upon the minor's death, adoption, emancipation, marriage, or attainment of majority or as ordered by the court.

Kinship Guardianship Assistance

Citation: Rev. Stat. Tit. 22, § 4038-D; Code of Rules 10 148 012, § 3

Subject to rules adopted to implement this section, the department may provide subsidies for a child who is placed in a permanency guardianship or in a similar status by a Native American Tribe, when reasonable but unsuccessful efforts have been made to place the child without guardianship subsidies and if the child would not be placed in a permanency guardianship without the assistance of the program.

In regulation: The child and permanency guardian are eligible for the guardianship subsidy only if all of the following criteria are met:

- The child must be in the legal custody of the department or Tribe.
- Reunification for the child must no longer be a viable permanency option.
- The child must meet the definition of a special needs child.
- Permanency guardianship must be considered to be in the best interests of the child by the court.
- The family must have been studied and approved as meeting the department's or Tribe's standards for permanency guardianship either by the department, Tribe, or by a licensed child-placing agency prior to placement in permanency guardianship status.

Appointment by the court as a permanency guardian does not establish that the permanency guardian meets the standards for permanency guardianship for purposes of the guardianship subsidy.

Links to Agency Policies

Maine Department of Health and Human Services, Office of Child and Family Services, [Kinship Care Policy](#)

Maryland

Current Through July 2018

Definitions

Citation: Code of Regs. § 07.02.29.02

The term 'guardianship' means that a court has granted physical and legal custody, including legal authority and responsibility for a child, to an individual to provide for a child's needs.

The term 'kinship care' means continuous 24-hour care and supportive services provided for a minor child placed by a child-placing agency in the home of a relative related by blood or marriage, within the fifth degree of consanguinity or affinity.

The term 'relative' means an adult who is at least age 18 and who is:

- Related by blood, marriage, or adoption within the fifth degree of consanguinity or affinity
- An individual who makes up the family support system, including adults related beyond the fifth degree of consanguinity or affinity, godparents, friends of the family, or other adults who have a strong familial bond with the child

The term 'relative caregiver' means a relative, or relatives as is applicable, of a child who is in the care, custody, or guardianship of a local department and who has been designated by the local department as a temporary 24-hour caregiver of that child.

The term 'relative guardian' means a relative caregiver whom the court has designated as guardian.

A 'guardianship assistance agreement' is the written and binding agreement between the local Department of Social Services and the relative caregiver.

The 'Guardianship Assistance Program' is a program whereby the State, under qualifying circumstances, contributes financial assistance and medical assistance to help in the care of a child.

Purpose of Guardianship

Citation: Code of Regs. § 07.02.29.01

The purpose of the guardianship assistance program is to provide legal stability for a child who is in the custody or guardianship of a local department by allowing relative caregivers to take full legal responsibility for the child.

The goals of the guardianship assistance program are both of the following:

- To encourage relative caregivers to become legal guardians of a child who has been placed in their home by a local department by removing financial barriers
- To provide a permanent, safe, and nurturing environment for a child that supports a familial cultural background

A Guardian's Rights and Responsibilities

This issue is not addressed in the statutes and regulations reviewed.

Qualifying the Guardian

Citation: Crts. & Jud. Proc. § 3-819.2; Code of Regs. §§ 07.02.11.26; 07.02.11.27

The report to the court shall include a:

- Home study
- Child protective services history
- Criminal history records check
- Review of the proposed guardian's physical and mental health history

In regulation: The local department shall give priority to the child's relatives over nonrelatives when determining permanency plans and placement. The decision by the local department to place a child with relatives shall be made:

- With the participation of the relatives
- After completing a home study to include:
 - » A physical description of the relative's living situation and family history
 - » Services needed by the child
 - » The relative's ability and capacity to safely assume parental responsibilities
- When feasible, in conjunction with a visit or visits by the child in the relative's home

Before custody and guardianship are granted to a relative or nonrelative of a child not committed to the local department, the local department shall:

- Determine if departmental funds are available to support and maintain the child
- Assess all factors necessary to determine the best interests of the child
- Pursuant to an order from the court, prepare a report on the suitability of the individual to be the guardian of the child that includes a:
 - » Home study for custody and guardianship
 - » Child protective services history, if any
 - » Criminal background check
 - » Review of the proposed guardian's physical and mental health history

The local department shall submit the report to the court within 120 days after the date that the court issued the order to the local department to produce the report.

Procedures for Establishing Guardianship**Citation: Fam. Law § 5-326; Crts. & Jud. Proc. § 3-819.2**

At a guardianship review hearing held 1 year or more after a juvenile court enters an order for guardianship of a child, the juvenile court may designate an individual guardian of the child if:

- The local department certifies the child's successful placement with the individual under the supervision of the local department or its agent for at least 180 days or a shorter period allowed by the juvenile court on recommendation of the local department.
- The local department files a report by a child-placing agency, completed in accordance with department regulations, as to the suitability of the individual to be the child's guardian.
- The juvenile court makes a specific finding that:
 - » For a compelling reason, adoption is not in the child's best interests.
 - » Custody and guardianship by the individual is in the child's best interests and is the least restrictive alternative available.

Designation of a guardian under this paragraph terminates the local department's legal obligations and responsibilities to the child.

Before granting custody and guardianship under this section, the court shall consider:

- Any assurance by the local department that it will provide funds necessary for the support and maintenance of the child
- All factors necessary to determine the best interests of the child
- A report by a local department or a licensed child-placing agency, completed in compliance with regulations adopted by the Department of Human Resources, on the suitability of the individual to be the guardian of the child.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance**Citation: Code of Regs. §§ 07.02.29.03; 07.02.29.04; 07.02.29.05**

Both the child and the relative caregiver shall meet the eligibility requirements stated in this chapter, including the following:

- The child shall be placed with the caregiver for at least 6 consecutive months prior to the establishment of guardianship assistance.
- The relative caregiver home shall be approved as a resource home or kinship home for the last 6 consecutive months in which the child resided with the caregiver.

A child committed to a local department shall be eligible for consideration to participate when:

- A court has determined that continuation in the home would be contrary to the welfare of the child.
- The child has resided with the relative caregiver for 6 consecutive months.
- The local department has established that both returning home and adoption have been ruled out.
- The child demonstrates a strong attachment to the relative caregiver.
- The child is under age 18 at the time of the court hearing to award custody and guardianship.
- The school-age child under age 18 is a full-time elementary or secondary school student or is incapable of attending school due to a documented medical condition.

To be eligible for the guardianship assistance program, the relative caregiver shall:

- Successfully complete the application requirements as set forth in this regulation
- Be an approved resource or formal kinship home with the child in the placement for the last 6 consecutive months
- Demonstrate a strong commitment to permanently care for the child

The relative caregiver shall:

- Complete a signed written application
- Complete a physical assessment and a mental health history
- Meet all the requirements of approval for a resource home or kinship home

The spouse of a relative guardian shall be encouraged to participate as a relative guardian for the agreement and the court-determined guardianship.

Links to Agency Policies

Maryland Department of Human Resources, Social Services Administration, 1.9.15 COMAR 07.02.29, [Guardianship Assistance Program](#) (PDF - 518 KB)

Massachusetts

Current Through July 2018

Definitions

Citation: Code of Regs. Tit. 110, § 2.00

The term 'guardian' means the individual, organization, or agency that has been appointed guardian of the person by a court of the Commonwealth, in accordance with chapter 190B of the statutes, or a court of competent jurisdiction in another State.

Purpose of Guardianship

Citation: Code of Regs. Tit. 110, §§ 7.300; 7.301

The Department of Children and Families is committed to establishing permanent placements for all children in its care and custody. Pursuant to this commitment, the department may sponsor a guardianship for selected children.

The children selected will be those who are not likely to return to their parents and who, for whatever reason, are not candidates for adoption.

The department shall consider sponsoring a guardianship for a child in its care or custody if the child meets all the following criteria:

- The child will not be able to return to his or her biological parents. This determination is made by the department based upon the history of the case and the clinical judgment of department social work staff.
- In the judgment of the department, there is no reasonable likelihood that the child will be adopted. This determination may be made by the department when, for example, the child is unwilling to be adopted, or when, in the clinical judgment of the department social work staff, adoption would not be in the child's best interests.
- The child has resided with the potential guardians for at least 1 year. This requirement may be waived if it is determined by the department to be in the best interests of the child.
- The child is at least age 12. This requirement may be waived if it is determined by the department to be in the best interests of the child (for example, to keep sibling groups together).

A Guardian's Rights and Responsibilities

Citation: Ann. Laws Ch. 190B, § 5-209

A guardian has the powers and responsibilities of a parent regarding the child's support, care, education, health, and welfare. A guardian shall act at all times in the child's best interests and exercise reasonable care, diligence, and prudence.

A guardian of a child may:

- Apply for and receive money for the support of the child that would be otherwise payable to the parent, guardian, or custodian
- Consent to medical or other professional care, treatment, or advice for the child
- Consent or refuse to consent to the marriage or adoption of the child
- Utilize the services of agencies and individuals to provide necessary and desirable social and protective services of different types appropriate to the child, including, but not limited to, counseling services, advocacy services, legal services, and other aid as the guardian deems to be in the interests of the child

Qualifying the Guardian

Citation: Code of Regs. Tit. 110, §§ 7.301; 7.101; 7.108

Before guardianship can be considered, the child must have resided with the potential guardians for at least 1 year. The placement of the child with the potential guardian must have been approved by the department as meeting department requirements, as set forth in regulation.

When considering a kinship or child-specific placement, the department shall require that the relative, extended family member, or individual chosen by the parent(s) meet the department's requirements as set forth in regulation. The approval process for the potential guardian, all household members, and the guardian's home shall include the following:

- Criminal background and child abuse and neglect history checks on all household members age 14 and older and on those younger about whom concerns exist
- A home visit
- A determination that the home meets the physical standards set forth in regulation
- Interviews of all household members

Procedures for Establishing Guardianship

Citation: Code of Regs. Tit. 110, § 7.302

The department shall proceed to implement the guardianships it sponsors as follows:

- The department determines that the child meets the criteria set forth above.
- The child's assigned social worker meets with the child and potential guardian. The guardianship plan is presented to them at this time for their consideration and approval.
- If guardianship is acceptable to the child and potential guardian, the social worker will make reasonable and diligent efforts to contact the child's parents. If the parents are contacted, they will be informed of the proposed guardianship proceeding, of their right to contest the guardianship proceeding, and of their right, if indigent, to court-appointed counsel. The parents' consent will then be sought.
- An employee of the legal staff of the department will prepare the appropriate court papers. If the parents of the child have consented, their consent shall be noted upon the court papers by obtaining their signature. If the parents of the child have not consented to the guardianship in writing, they will be given notice as required by law.
- An employee of the legal staff of the department will initiate and prosecute all court proceedings necessary to finalize the guardianship. The guardianship plan will be presented to the court for review as part of the proceeding, and said plan shall address the appropriateness of the proposed placement and the suitability of the proposed guardians.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Laws Ch. 190B, § 5-210

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the child's death, adoption, marriage, or attainment of majority. Termination shall not affect the guardian's liability for prior acts or the obligation to account for funds and assets of the ward. Resignation of a guardian shall not terminate the guardianship until it has been approved by the court.

Kinship Guardianship Assistance

Citation: Code of Regs. Tit. 110, § 7.303

If a child is placed under guardianship through the department, and the child does not receive support payments from any other State or Federal agency, then the child shall be eligible for continued support payments and/or medical assistance from the department, to the same extent as if the child had remained in foster care.

If a child is placed under guardianship through the department, and the child is receiving support payments from any other State or Federal agency, then the child will be eligible for support payments and/or medical assistance from the department, only to the extent that it would raise the total support from all sources to the amount the child would be receiving if he/she had remained in foster care.

Links to Agency Policies

Massachusetts Code of Regulations:

- Title 110, [Table of Contents](#)
- Title 110, [Chapter 7.000, Services](#) (PDF - 517 KB)

Michigan

Current Through July 2018

Definitions

Citation: Comp. Laws § 722.872

The term 'guardian' means a person appointed by the court to act as a legal guardian for a child under §§ 712A.19a and 712A.19c.

The term 'relative' means an individual who is at least age 18 and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, or the spouse of any of the above, even after the marriage has ended by death or divorce. The parent of a man who the court has found probable cause to believe is the putative father, if there is no man with legally established rights to the child, may be considered a relative under this act, but this is not to be considered as a finding of paternity and does not confer legal standing on the putative father.

Purpose of Guardianship

Citation: Pol. Man. GDM 600

Juvenile guardianship is available for temporary and permanent court wards and State wards when reunification and adoption have been ruled out as permanency goals. The court, at a permanency-planning hearing, may appoint a juvenile legal guardian for a child in lieu of terminating parental rights or returning the child home.

A Guardian's Rights and Responsibilities

Citation: Comp. Laws § 700.5215

A child's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's child, except that a guardian is not legally obligated to provide for the child from the guardian's own money and is not liable to third persons by reason of the parental relationship for the child's acts.

The guardian shall facilitate the child's education and social or other activities, and shall authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons unless it would be illegal for a parent to have consented.

A guardian may consent to the child's marriage or adoption.

A guardian must report the condition of the child and of the child's estate that is subject to the guardian's possession or control as ordered by the court on petition of a person interested in the child's welfare or as required by court rule. The report must detail the condition of the child, medical or mental health treatment or care to which the child was subjected, and what reason, if any, exists for the continuation of the guardianship.

Qualifying the Guardian

Citation: Comp. Laws §§ 712A.19a; 722.874

If a child is placed in a guardian's or a proposed guardian's home, the court shall order the Department of Health and Human Services to perform an investigation and file a written report of the investigation for a review. The court shall order the department to do all of the following:

- Perform a criminal record check within 7 days
- Perform a central registry clearance within 7 days
- Perform a home study and file a copy of the home study with the court within 30 days, unless a home study has been performed within the immediately preceding year

If a home study has been performed within the immediately preceding year, a copy of that home study shall be submitted to the court.

The guardian who receives guardianship assistance must be a licensed foster parent. The approval process shall include criminal record checks and child abuse and neglect central registry checks on the guardian and all adults living in the guardian's home, as well as fingerprint-based criminal record checks on the guardian.

Procedures for Establishing Guardianship

Citation: Comp. Laws § 712A.19a

If the court determines at a permanency-planning hearing that a child should not be returned to his or her parent, the court may order the agency to initiate proceedings to terminate parental rights. This is not required if the child is being cared for by relatives or adoption has been ruled out as an appropriate permanency goal for the child.

If the agency demonstrates that initiating the termination of parental rights to the child is clearly not in the child's best interests, or the court does not order the agency to initiate termination of parental rights to the child, then the court, if the court determines that it is in the child's best interests, may appoint a guardian for the child. The guardianship may continue until the child is emancipated.

Contents of a Guardianship Order

Citation: Comp. Laws § 722.875b

Legal guardianship is a judicially created relationship, as provided for under §§ 712A.19a and 712A.19c, between the child and his or her guardian that is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian the following parental rights with respect to the child:

- Protection
- Education
- Care and control of the person
- Custody of the person
- Decision-making

Modification/Revocation of Guardianship

Citation: Comp. Laws § 712A.19a

The court's jurisdiction over a guardianship created under this section shall continue until released by court order. The court shall review a guardianship annually and may conduct additional reviews as the court considers necessary. The court may order the department or a court employee to conduct an investigation and file a written report of the investigation.

In making the determinations under this section, the court shall consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child-caring institution, relative with whom the child is placed, or guardian ad litem, in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing.

The court may, on its own motion or upon petition from the department or the child's lawyer guardian ad litem, hold a hearing to determine whether a guardianship appointed under this section shall be revoked.

A guardian may petition the court for permission to terminate the guardianship. A petition may include a request for appointment of a successor guardian.

After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of evidence that continuation of the guardianship is not in the child's best interests, the court shall revoke or terminate the guardianship and appoint a successor guardian or restore temporary legal custody to the department.

Kinship Guardianship Assistance

Citation: Comp. Laws §§ 722.873; 722.874

A child is eligible to receive guardianship assistance if all of the following apply:

- The child has been removed from home, and a court has found that remaining at home would be contrary to the child's welfare.
- The child has lived in the home of the prospective guardian for at least 6 consecutive months.

- Reunification or placing the child for adoption is not an appropriate option.
- The child has a strong attachment to the guardian, and the guardian has a strong commitment to caring permanently for the child until the child reaches age 18.
- A child who is at least age 14 has been consulted regarding the guardianship.

A guardian who meets all of the following criteria may receive guardianship assistance on behalf of an eligible child:

- The guardian is the child's relative or legal custodian.
- The guardian is a licensed foster parent and approved for guardianship assistance by the department.
- The child has resided with the guardian in his or her home for a minimum of 6 months before the applying for guardianship assistance.

Only a relative who is a licensed foster parent caring for a child who is eligible to receive title IV-E-funded foster care payments for 6 consecutive months is eligible for Federal title IV-E for guardianship assistance. A child who is not eligible for title IV-E funding is placed with a licensed foster parent, related or unrelated, may be eligible for State-funded guardianship assistance.

If a child who is eligible for title IV-E-funded guardianship assistance has a sibling who is not eligible, both of the following apply:

- The child and any of the child's siblings may be placed in the same relative guardianship arrangement if the department and the relative agree on the appropriateness of the arrangement for the sibling.
- Title IV-E-funded relative guardianship assistance payments may be paid on behalf of each sibling placed in the home.

Links to Agency Policies

Michigan Department of Health and Human Services:

- [Relative Caregiving: What You Need to Know](#) (PDF - 4,293 KB)
- [Child Guardianship Manual](#) (PDF - 65 KB)

Minnesota

Current Through July 2018

Definitions

Citation: Ann. Stat. § 260C.007

The term 'custodian' means any person who is under a legal obligation to provide care and support for a child or who is in fact providing care and support for a child. For an Indian child, custodian means any Indian person who has legal custody of an Indian child under Tribal law or custom; under State law; or to whom temporary physical care, custody, and control has been transferred by the parent of the child, as provided in § 260.755, subd. 10.

The term 'family or household members' means spouses, former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

The term 'legal custody' means the right to the care, custody, and control of a child who has been taken from a parent by the court in accordance with the provisions of § 260C.201 or 260C.317.

The term 'parent' means a person who has a legal parent and child relationship with a child that confers or imposes on the person legal rights, privileges, duties, and obligations, including the mother and child relationship and the father and child relationship. For matters governed by the Indian Child Welfare Act, parent includes any Indian person who has adopted a child by Tribal law or custom but does not include the unwed father when paternity has not been acknowledged or established.

The term 'relative' means a person related to the child by blood, marriage, or adoption; the legal parent, guardian, or custodian of the child's siblings; or an individual who is an important friend with whom the child has resided or had significant contact. 'Relative of an Indian child' means a person who is a member of the Indian child's family as defined in the Indian Child Welfare Act of 1978.

Purpose of Guardianship

Citation: Ann. Stat. §§ 260C.513; 256N.22

Termination of parental rights and adoption, or guardianship to the Commissioner of Human Services through a consent to adopt, are preferred permanency options for a child who cannot return home. If the court finds that termination of parental rights and guardianship to the commissioner are not in the child's best interests, the court may transfer permanent legal and physical custody of the child to a relative when that order is in the child's best interests.

To be eligible for guardianship assistance, the legally responsible agency must complete the following determinations regarding permanency for the child prior to the transfer of permanent legal and physical custody:

- A determination that reunification and adoption are not appropriate permanency options for the child
- A determination that the child demonstrates a strong attachment to the prospective relative custodian, and the prospective relative custodian has a strong commitment to caring permanently for the child

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 260C.515

A transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision-making on behalf of the child.

Qualifying the Guardian

Citation: Ann. Stat. §§ 260C.204; 245C.08

A relative or foster parent who wants to be considered for legal permanent custody of the child shall cooperate with the background study required under § 245C.08, if the individual has not already done so, and with the home study process required under chapter 245A for providing child foster care and for adoption under §259.41.

For the background study conducted by the Department of Human Services, the commissioner shall review the following:

- Information related to names of substantiated perpetrators of maltreatment of vulnerable adults
- Department records relating to the maltreatment of children
- Information from juvenile courts when there is reasonable cause
- Information from the Bureau of Criminal Apprehension, including information regarding a background study subject's registration in Minnesota as a predatory offender
- Information received as a result of submission of fingerprints for a national criminal history record check
- Information from the child abuse and neglect registry for any State in which the background study subject has resided in the past 5 years
- Information from national crime information databases when the background study subject is age 18 or older

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 260C.515

If the child is not returned home at or before the conclusion of a permanency hearing, the court may order permanent legal and physical custody to a fit and willing relative in the best interests of the child according to the following requirements:

- An order for transfer of permanent legal and physical custody to a relative shall only be made after the court has reviewed the suitability of the prospective legal and physical custodian.
- In transferring permanent legal and physical custody to a relative, the juvenile court shall follow the standards applicable under this chapter and chapter 260 and the procedures in the Minnesota Rules of Juvenile Protection Procedure.
- A permanent legal and physical custodian may not return a child to the permanent care of a parent from whom the court removed custody without the court's approval and without notice to the responsible social services agency.
- The social services agency may file a petition naming a fit and willing relative as a proposed permanent legal and physical custodian.

- When a petition is made for transfer of permanent legal and physical custody to a relative who is not a parent, the court must find that:
 - » Transfer of permanent legal and physical custody is in the child's best interests.
 - » Adoption is not in the child's best interests based on the determinations in the kinship placement agreement required under § 256N.22, subd. 2.
 - » The agency made efforts to discuss adoption with the child's parent or parents, or the agency did not make efforts to discuss adoption and the reasons why efforts were not made.
 - » There are reasons to separate siblings during placement, if applicable.

Contents of a Guardianship Order

Citation: Ann. Stat. § 260C.515

The juvenile court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the permanent legal and physical custodian for purposes of ensuring appropriate services are delivered to the child and permanent legal custodian for the purpose of ensuring conditions ordered by the court related to the care and custody of the child are met.

Modification/Revocation of Guardianship

Citation: Ann. Stat. §§ 260C.521; 518.18; 518.185; 260C.521

An order for a relative to have permanent legal and physical custody of a child may be modified using standards under §§ 518.18 and 518.185. The social services agency is a party to the proceeding and must receive notice.

A motion to modify a custody order may be granted if the court has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development. A party seeking modification of a custody order shall submit an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits.

The kinship assistance agreement ends upon death or incapacity of the relative custodian or modification of the order for permanent legal and physical custody in which legal or physical custody is removed from the relative custodian. In the event of the death or incapacity of the relative custodian, eligibility for kinship assistance and title IV-E assistance, if applicable, is not affected if the relative custodian is replaced by a successor named in the kinship assistance benefit agreement.

Kinship Guardianship Assistance

Citation: Ann. Stat. § 256N.22

To be eligible for guardianship assistance, there must be a judicial determination that a transfer of permanent legal and physical custody to a relative is in the child's best interests. For a child under the jurisdiction of a Tribal court, a judicial determination under a similar provision in Tribal code indicating that a relative will assume the duty and authority to provide care, control, and protection of a child who is residing in foster care, and to make decisions regarding the child's education, health care, and general welfare until adulthood, and that this is in the child's best interests is considered equivalent. Additionally, a child must:

- Have been removed from the child's home pursuant to a voluntary placement agreement or court order
- Have resided with the prospective relative custodian who has been a licensed child foster parent for at least 6 consecutive months or have received from the licensure requirement based on a determination that:
 - » An expedited move to permanency is in the child's best interests.
 - » Expedited permanency cannot be completed without provision of guardianship assistance.
 - » The prospective relative custodian is uniquely qualified to meet the child's needs on a permanent basis.
- Meet applicable citizenship and immigration requirements
- Have been consulted regarding the proposed transfer of permanent legal and physical custody to a relative if the child is at least age 14

In addition to the above requirements, the child's prospective relative custodian must meet applicable background study requirements.

To be eligible for title IV-E guardianship assistance, a child must also meet any additional criteria in 42 U.S.C § 673(d). A sibling who meets the criteria for title IV-E guardianship assistance is eligible for assistance if the child and sibling are placed with the same relative custodian.

Links to Agency Policies

Minnesota Administrative Rules, [Department of Human Services](#)

Minnesota Department of Human Services:

- [Northstar Care for Children: Practice Guide](#) (PDF - 440 KB)
- [Paths to Permanency](#) (PDF - 473 KB)

Mississippi

Current Through July 2018

Definitions

Citation: Ann. Code § 43-21-105

The term 'parent' means the father or mother to whom the child has been born or by whom the child has been legally adopted.

'Guardian' means a court-appointed guardian of the person of a child. A 'custodian' means any person having the present care or custody of a child whether such person be a parent or otherwise. A 'legal custodian' is a court-appointed custodian of the child.

The term 'custody' means the physical possession of the child by any person. The term 'legal custody' means the legal status created by a court order that gives the legal custodian the responsibilities of physical possession of the child and the duty to provide the child with food, shelter, education, and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

The term 'durable legal custody' means the legal status created by a court order that gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide the child with care, nurture, welfare, food, shelter, education, and reasonable medical care. All these duties are subject to the residual rights and responsibilities of the natural parents or guardians of the child or children.

'Durable legal relative guardianship' means the legal status created by a youth court order that conveys the physical and legal custody of a child by durable legal guardianship to a relative or fictive kin who is licensed as a foster or resource parent.

The term 'relative' means a person related to the child by affinity or consanguinity within the third degree. The term 'fictive kin' means a person not related to the child legally or biologically but who is considered a relative due to a significant, familial-like and ongoing relationship with the child and family.

Purpose of Guardianship

Citation: Ann. Code § 43-21-609

If the court finds that temporary relative placement, adoption, or foster care placement is inappropriate, unavailable, or otherwise not in the best interests of the child, durable legal custody may be granted by the court to any person, subject to any limitations and conditions the court may prescribe.

A Guardian's Rights and Responsibilities

Citation: Code of Rules § 18-006-104

Durable legal custody gives the custodian the responsibilities of physical possession of the child and the duty to provide the child with care, nurture, welfare, food, shelter, education, and reasonable medical care. Legal guardianship transfers to the caregiver the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The department will be released from any oversight or monitoring responsibilities in either durable legal custody or legal guardianship unless ordered otherwise by the court. The birth parents maintain their parental rights.

Qualifying the Guardian

Citation: Code of Rules § 18-006-104

The caseworker will have the following responsibilities in achieving durable legal custody and/or guardianship:

- Enlist the family's cooperation in identifying all possible relative resources and make contact with them in a timely manner
- Assure that a home evaluation, including police and background checks of any and/or all relatives who are being considered, has been completed

- Conduct a home evaluation that includes an assessment of the safety of the home
- Discuss alternate permanency options, including adoption, with all parties involved in terms they understand to ensure that this is the most appropriate option available for this child
- In conjunction with the child, relatives, and parents, develop a family service plan that identifies activities to be performed by all parties
- Document all efforts to engage families in the planning and development of child's permanent goals
- Inform the court of the identified individuals' interest and ability to assume durable legal custody and/or legal guardianship
- Obtain approval of the goal from the court
- Provide support such as referrals, financial services, and/or other follow-up services to secure the placement
- Complete the Durable Legal Custody Agreement with the legal guardians designated by the court

Procedures for Establishing Guardianship

Citation: Ann. Code § 43-21-609; Code of Rules § 18-006-104

In neglect and abuse cases, the youth court may grant durable legal relative guardianship to a relative or fictive kin licensed as a foster parent, if the licensed relative foster parent or licensed fictive kin foster parent exercised physical custody of the child for at least 6 months before the grant of durable legal relative guardianship and the Department of Child Protection Services had legal custody or exercised supervision of the child for at least 6 months.

In order to establish durable legal relative guardianship, the youth court must find the following:

- That both reunification and adoption have been determined to be inappropriate
- That the relative guardian or fictive kin guardian shows full commitment to the care, shelter, education, nurture, and reasonable medical care of the child
- That the youth court consulted with any child age 12 or older before granting durable legal relative guardianship

In regulation: No child shall be assigned a permanency goal of durable legal custody unless there are documented efforts in the child's case record to move the child to adoption and documentation of a reasonable basis why it is in the child's best interests not to be considered for adoption.

Durable legal custody or legal guardianship is achieved after the court grants custody to the placement resource. No further review hearings are necessary. The department is relieved of custody of the child and from any oversight or monitoring responsibilities unless otherwise ordered by the court.

Contents of a Guardianship Order

Citation: Code of Rules § 18-006-104, App. P

In the durable legal custody agreement, the custodian agrees to the following terms:

- The child will be allowed to remain in the home of the custodian and be raised as a member of the family group until the child reaches adulthood.
- The custodian will provide continued care for the child in the same home in order to restore and create a permanent and stable foundation for the child.
- The custodian agrees to act as the primary parental figure of the child until he or she becomes an adult, marries, or is otherwise freed from minority.
- The custodian agrees that he or she will not seek the removal of the child from his or her home except under the most serious and emergency circumstances, acknowledging his or her willingness to accept legal, physical, and financial responsibility if durable legal custody is accepted and ordered by the court.
- The custodian acknowledges that the option of adoption was presented and discussed and determined not to be in the best interests of the child and agrees and understands that he or she is accepting legal and physical custody of the child and that any board payment and/or Medicaid being received through the department will end at the time the court finalizes custody.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

This issue is not addressed in the statutes and regulations reviewed.

Links to Agency Policies

Mississippi Department of Child Protection Services (MDCPS), MDCPS Policy, [Table of Contents](#)

Missouri

Current Through July 2018

Definitions

Citation: Ann. Stat. §§ 453.072; 211.021; Code of Regs. Tit. 13, § 35-38.010

The term 'close nonrelated person' means any nonrelated person whose life is so intermingled with the child that the relationship is similar to a family relationship. The term 'relative' means any grandparent, aunt, uncle, adult sibling, adult first cousin of the child, or any other person related to the child by blood or affinity.

The term 'legal custody' means the right to the care, custody, and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment, and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living.

In regulation: The term 'relative' means a person related to another by blood, adoption, or affinity within the third degree (grandparent, brother, sister, half-brother, half-sister, stepparent, stepbrother, stepsister, uncle, aunt, or first cousin).

The term 'kinship' applies to a person not related by blood, marriage, or adoption who has a close relationship with the child or child's family (godparents, neighbors, teachers, close family friends, and fellow church members) or a person who has a close relationship with the child or child's family and is related to the child by blood or affinity beyond the third degree.

Purpose of Guardianship

Citation: Child Welf. Man. Sec. 4, Ch. 22

Guardianship is a permanency option for children in out-of-home care when neither family reunification nor adoption is feasible or desirable, and the caregiver family is willing to assume a greater level of responsibility and authority over the child.

A Guardian's Rights and Responsibilities

Citation: Child Welf. Man. Sec. 4, Ch. 22

The guardian becomes legally responsible and obligated to take care of the child. The guardian must make all necessary decisions regarding the child's affairs, including medical care, education, and finances. Also, the guardian is under a duty to provide the child with necessary food, clothing, and shelter. The guardian is directly supervised by and answerable to the court that granted the petitioner's request for guardianship.

Qualifying the Guardian

Citation: Code of Regs. Tit. 13, § 35-38.010; Child Welf. Man. Sec. 4, Ch. 22

A prospective guardian shall not be approved if he or she:

- Has a felony conviction for child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery
- Has had a felony conviction for physical assault, battery, or a drug-related offense in the past 5 years

In policy: The Department of Social Services will pursue guardianship when:

- Family reunification is not likely in the foreseeable future and termination of parental rights is deemed inappropriate.
- Adoption is not an option.
- The current caregiver is able to meet the needs of the child, including financial, and is willing to pursue guardianship.
- The current placement is stable.
- The child's parent(s) will consent to guardianship.
- The child, if over age 14, consents.

- The juvenile court having jurisdiction supports guardianship as an option and is willing to terminate its jurisdiction when guardianship is granted.
- The child's family support team is supportive of a plan for guardianship.

The caregiver family must comply with all licensing requirements, including training, background checks, and the home-study process.

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 211.477(4); Child Welf. Man. Sec. 4, Ch. 22

If, after the dispositional hearing, the court finds that one or more of the grounds set out for termination of parental rights exists, but that termination is not in the best interests of the child because the court finds that the child would benefit from the continued parent-child relationship or because the child who is age 14 or older objects to the termination, the court may appoint a guardian under the provisions of chapter 475.

In policy: Persons interested in serving as a child's guardian must file a petition in probate court in accordance with chapter 475. If the court makes a determination that the child is a minor incapable of caring for him- or herself and unable to manage his or her affairs, a guardian is appointed.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Rev. Stat. § 453.072; Code of Regs. Tit. 13, §§ 35-38.010; 35-38.021

Any subsidies available to adoptive parents also shall be available to a qualified relative of a child or a qualified close nonrelated person who is granted legal guardianship of the child.

In regulation: In order for a child to qualify for a guardianship subsidy, the child shall meet the following criteria:

- The child must be under age 18 at the time of placement.
- The child must be in the custody of the department or a child-placing agency.
- The child cannot or should not be returned to the home of his or her parents.
- The child must be a 'child with special needs,' as defined below, that precludes placement with a guardian without providing subsidy.

To be eligible for a subsidy, a child shall meet one or more of the following conditions:

- Any physical condition, whether congenital or not, that requires treatment or the purchase of special equipment or services
- Intellectual impairment or dysfunction
- Racial or ethnic minority
- Be age 5 or older and younger than 18, or younger than 21 if the child's condition requires extraordinary treatment or rehabilitative services
- Two or more children who are siblings and being placed with the same family
- A developmental disability that prevents the child from functioning at the normal level for his or her age
- A mental or emotional disturbance that impairs the child's mental functioning
- A severe behavioral condition or inadequate social development that interferes with the child's ability to form satisfactory relationships
- A history of circumstances such as long-term out-of-home care, incest, or a social or genetic complication in the family background, that can impede an adoption

In order for a guardian to be eligible for subsidy, he or she shall be a grandparent or great-grandparent, aunt or great-aunt, uncle or great-uncle, adult sibling, or adult first cousin of the child who has been approved as a guardianship placement.

Links to Agency Policies

Missouri Department of Social Services, [Child Welfare Manual](#), see [Section 4, Chapter 22](#)

Montana

Current Through July 2018

Definitions

Citation: Pol. Man. § 407-4

A 'legal guardian' is a person who has qualified as a caregiver of a child in the custody of the Department of Public Health and Human Services or Tribe and has been appointed guardian by the court.

A 'legal guardianship' is a judicially created relationship between a child and caregiver that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver the following parental rights with respect to the child: protection, education, care and control of the child, custody of the child, and decision-making.

A 'kinship guardian' is:

- A member of the child's extended family
- A member of the child's or family's Tribe
- The child's godparents
- The child's stepparents
- A person to whom the child, child's parents, and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency's involvement with the child or family; also known as 'fictive kin'

Documentation demonstrating that the prospective guardian meets the 'fictive kin' definition must be maintained in the child's case file. Documentation may include, but is not limited to, the child's and/or birth parent(s) statement ascribing a family relationship and significant emotional tie that existed prior to the agency's involvement.

A 'nonkinship guardian' is a person to whom the child or child's family did not have a significant emotional tie that existed prior to the agency's involvement with the child or family (i.e. foster parent).

Purpose of Guardianship

Citation: Ann. Code § 41-3-444

A guardian may be appointed for a dependent child when the Department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department likely would be unproductive, and reunification of the parent and child would be contrary to the best interests of the child.

A Guardian's Rights and Responsibilities

Citation: Ann. Code §§ 41-3-444; 72-5-231

A guardian appointed under this section may exercise the powers and has the duties provided in § 72-5-231.

Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's child. However, a guardian is not legally obligated to provide from the guardian's own funds for the child and is not liable to third persons by reason of the parental relationship for acts of the child.

The guardian is empowered to facilitate the child's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the child resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have consented. A guardian also may consent to the marriage or adoption of the child.

Qualifying the Guardian

Citation: Admin. Rules § 37.50.1101

In order to be approved as a guardian, the prospective guardian and the guardian's home must meet the requirements set forth for youth foster homes in title 37, chapter 51, of the Administrative Rules.

The child for whom guardianship is being considered must have resided with the prospective guardian for a minimum of 6 months.

A written assessment of the prospective guardian and the guardian's home must be completed. The assessment must include a determination that the prospective guardian and home of the prospective guardian meet the requirements of this rule. The assessment must demonstrate the appropriateness of the proposed guardian to become the legal custodian for a specific child. Factors to be considered in determining the appropriateness of the proposed guardian include the following:

- The proposed guardian's knowledge of the child's background, including placement history, history of trauma, and the potential effect of that history on the child's development and future functioning
- Understanding and acceptance of the continued role of the child's birth family
- Understanding and acceptance of the powers and duties of a guardian
- The desire of the prospective guardian to become the child's guardian

If the child for whom guardianship is being considered is age 12 or older, the child must be consulted regarding the plan for guardianship.

Procedures for Establishing Guardianship

Citation: Ann. Code § 41-3-444

The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department. The court may appoint a guardian if the following facts are found by the court:

- The department has given its written consent to the appointment of the guardian and whether or not the guardianship is to be subsidized.
- If the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies.
- The child has been adjudicated a youth in need of care.
- The child has lived with the potential guardian in a family setting, and the potential guardian is committed to providing a long-term relationship with the child.
- It is in the best interests of the child to remain with or to be placed with the potential guardian.
- Either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests.
- If the child for whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's Tribe has received notification from the State of the initiation of the proceedings.

In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child.

Contents of a Guardianship Order

Citation: Ann. Code § 41-3-444

The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents, except for the department's provision of a financial subsidy, if any.

Modification/Revocation of Guardianship

Citation: Ann. Code § 41-3-444

The court may revoke a guardianship if the court finds, after hearing a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of a hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

A guardian may petition the court for permission to resign the guardianship. A petition may include a request for the appointment of a successor guardian. After notice and hearing the petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department.

Kinship Guardianship Assistance

Citation: Ann. Code § 41-3-444; Admin. Rules §§ 37.50.1102; 37.50.1103

The department may provide a financial subsidy to a guardian if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child.

In regulation: A child is eligible to have State-subsidized guardianship payments made on the child's behalf if the child has been adjudicated a youth in need of care. Subsidized guardianship payments may be made to the guardian of an eligible child when:

- The child meets the guardianship criteria found in § 41-3-444.
- The prospective guardian and guardian's home meet the requirements of regulation.
- The court has issued a decree of guardianship.
- An agreement describing the terms and conditions of the guardianship subsidy has been negotiated by the department with the prospective guardian.
- Prior to the issuance of the guardianship decree, the prospective guardian and the department have signed an agreement describing the negotiated terms and conditions of the subsidy.

Under the Title IV-E State Plan, Guardianship Assistance Program, approved by the U.S. Department of Health and Human Services, the department is authorized to utilize Federal funds to pay guardianship subsidies on behalf of children who meet the requirements established under the terms and conditions of the Title IV-E State Plan, Guardianship Assistance Program.

Federally subsidized guardianship payments may be made to the guardian of an eligible child when:

- The prospective guardian meets the definition of a 'kinship guardian' as established in the Title IV-E State Plan.
- The requirements of Administrative Rule 37.51.1101 are met.
- The requirements established under the Title IV-E State Plan and the requirements of Administrative Rule 37.50.1102 are met.

Links to Agency Policies

Montana Department of Public Health and Human Services, [Child & Family Services Policy Manual](#), see sections 302-4 and 407-4.

Nebraska

Current Through July 2018

Definitions

Citation: Rev. Stat. §§ 71-1901; 43-1503

The term 'kinship home' means a home where a child receives foster care and at least one of the primary caregivers has previously lived with the child or a sibling of the child, or is a trusted adult that has a preexisting, significant relationship with the child or a sibling of the child.

The term 'relative home' means a home where a child receives foster care and at least one of the primary caregivers is related to the child or to a sibling of the child in his or her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caregivers is an extended family member as defined in § 43-1503.

For an Indian child, an 'extended family member' shall be as defined by the law or custom of the Indian child's primary Tribe or, in the absence of such laws or customs, shall be a person who has reached age 18 and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent.

Purpose of Guardianship

Citation: Admin. Code Tit. 390, § 6-001.01

Legal guardianship is considered as a permanency objective when:

- All efforts to reunify the family have been exhausted.
- The child cannot return home.
- All reasonable efforts to secure adoption of the child have been unsuccessful, or it is determined that adoption is not in the best interests of the child.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. § 43-1312.01

In the order granting guardianship, the juvenile court shall grant to the guardian such powers, rights, and duties with respect to the care, maintenance, and treatment of the child, as the biological or adoptive parent of the child would have.

A guardianship established under this section does not terminate the parent-child relationship, including:

- The right of the child to inherit from his or her parents
- The right of the biological parents to consent to the child's adoption
- The responsibility of the parents to provide financial, medical, or other support as ordered by the court

Qualifying the Guardian

Citation: Rev. Stat. § 43-1312.01; Admin. Code Tit. 390, §§ 6-004; 6-004.01

Before issuing an order for guardianship, the court must find that the guardian:

- Is suitable and able to provide a safe and permanent home for the child
- Has made a commitment to provide for the financial, medical, physical, and emotional needs of the child until the child reaches the age of majority or until the termination of extended guardianship assistance payments pursuant to § 43-4511 or 43-4514
- Has made a commitment to prepare the child for adulthood and independence
- Agrees to give notice of any changes in his or her residential address or the residence of the child by filing a written document in the juvenile court file of the child

In regulation: The Department of Health and Human Services will support a legal guardianship using the following guidelines:

- The child has a relationship with a prospective guardian and has lived successfully for a minimum of 6 months in the home of the guardian, or the caseworker has determined that the child will develop a relationship with a relative or foster parent who is committed to the guardianship plan.
- The prospective guardian and the child can function effectively without department supervision.
- The guardian is able and willing to support the child financially, or satisfactory financial arrangements can be made.
- The child is age 12 or older, is part of a sibling group, or is attached to the proposed guardian and adoption is not feasible.

The department will use the following priorities in selecting a potential guardian:

- A relative of the child
- A foster parent or another person with whom the child has an existing relationship
- A new foster parent who is committed to the guardianship plan

The child's wishes will be taken into consideration in any decision regarding a potential guardian.

Procedures for Establishing Guardianship

Citation: Rev. Stat. § 43-1312.01; Admin. Code Tit. 390, §§ 6-004.02; 6-004.03

If the permanency plan for a child does not recommend return of the child to his or her parent or that the child be placed for adoption, the juvenile court may place the child in a guardianship in a relative home, in a kinship home, or with an individual as provided in § 43-285 if:

- The child is a juvenile who has been adjudged to be dependent.
- The child has been in the placement for at least 6 months.
- The child consents to the guardianship, if the child is age 10 or older.

In regulation: The child, the prospective guardian, the child's guardian ad litem, and the birth parents, if their parental rights are intact, will be consulted for consent to the guardianship. If a child under age 13 has objections to the guardianship, these will be explored with the child and the guardian ad litem, and a determination of the best interests of the child will be made. If a child age 14 or older objects to the guardianship, the guardianship will not be pursued.

To ensure stability and continuity to the child, the caseworker will assist all parties involved to develop a written plan for visitation with any siblings, parents (if appropriate), and other relatives or important persons in the child's life.

When guardianship is determined to be the plan of choice for a child, and the child has resided with the prospective guardian for a minimum of 6 months, the caseworker will advise the prospective guardian to retain legal counsel and file a petition for guardianship in the county court of the county of his or her residence. The caseworker will appear in court to testify in support of the petition.

Upon approval of the court of the guardianship, the caseworker will close the case. Once the court order establishes guardianship, the department no longer has any authority or responsibility for the child except as might exist due to a subsidized guardianship.

Contents of a Guardianship Order

Citation: Rev. Stat. § 43-1312.01

In the order granting guardianship, the juvenile court:

- May specify the frequency and nature of family time or contact between the child and his or her parents, if appropriate
- May specify the frequency and nature of family time or contact between the child and his or her siblings, if appropriate
- Shall require that the guardian not return the child to the physical care and custody of the person from whom the child was removed without prior approval of the court

The court shall discontinue permanency reviews and case reviews and shall relieve the department of the responsibility of supervising the placement of the child. Notwithstanding the retention of juvenile court jurisdiction, the guardianship placement shall be considered permanent for the child.

Modification/Revocation of Guardianship

Citation: Rev. Stat. § 43-1312.01

The juvenile court shall retain jurisdiction over the child for modification or termination of the guardianship order. The child shall remain in the custody of the guardian unless the order creating the guardianship is modified by the court.

Guardianships established under this section shall terminate on the child's 19th birthday, unless the child is eligible for continued guardianship assistance payments under § 43-4511 or 43-4514 and an agreement is signed by the department, the guardian, and the young adult to continue the guardianship assistance. The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian for the purpose of an extended guardianship shall be used for the benefit of the young adult.

Upon the child's 19th birthday, regardless of the existence of an agreement to extend the guardianship until the child's 21st birthday, the guardian shall no longer have the legal authority to make decisions on behalf of the child and shall have no more authority over the person or property of the child than a biological or adoptive parent would have over his or her child, absent consent from the child.

Kinship Guardianship Assistance

Citation: Rev. Stat. § 43-284.02; Admin. Code Tit. 390, §§ 6-005.02

The department may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

In regulation: The subsidized guardianship program provides continued financial assistance to a child after a legal guardian has been appointed and department's custody has been terminated. State funds may be used for subsidized guardianship payments on behalf of a child who was a ward of the department, as provided in § 43-284.02.

A child is eligible for the subsidized guardianship program if he or she is a ward of the department and meets the criteria for subsidized guardianship as follows:

- The child has a documented behavioral, emotional, physical, or mental disability.
- The child is a member of a sibling group of three or more to be placed together.
- The child has a strong attachment to the potential guardian.
- The child is age 12 or older or, if under age 12, is part of a sibling group, or is attached to the proposed guardian and cannot be freed for adoption.

A child's eligibility ends upon the child's 19th birthday, when the child becomes self-supporting, or when the guardianship order is terminated.

Links to Agency Policies

Nebraska Department of Health and Human Services, Child and Family Services Rules and Regulations, [Title 390, Chapter 6, Permanency for Children](#) (PDF - 462 KB)

Nevada

Current Through July 2018

Definitions

Citation: Rev. Stat. § 422A.650

As used in this section, unless the context otherwise requires, 'qualifying relative' means a person specified in title 45, § 233.90(c)(1)(v) (A) of the Code of Federal Regulation.

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. § 159.079

Except as otherwise ordered by the court, a guardian of the child has the care, custody, and control of the child, and has the authority and shall perform the duties necessary for the proper care, maintenance, education, and support of the child, including, without limitation, the following:

- Supplying the child with food, clothing, shelter, and all incidental necessities, including providing an appropriate residence for the child
- Authorizing medical, surgical, dental, psychiatric, psychological, hygienic, or other remedial care and treatment for the child
- Seeing that the child is properly trained and educated and that the child has the opportunity to learn a trade, occupation, or profession

Qualifying the Guardian

Citation: Rev. Stat. § 432B.625

Before entering into an agreement for guardianship assistance, an agency that provides child welfare services shall obtain from appropriate law enforcement agencies information on the background and personal history of each relative of a child who seeks assistance, and each resident of the home of such relative who is age 18 or older, to determine whether the person investigated has been arrested for or convicted of any crime.

The relative and each resident of the relative's home must a complete set of fingerprints and provide written permission authorizing checks of State and Federal criminal records and a child abuse and neglect records screening.

Procedures for Establishing Guardianship

Citation: Rev. Stat. §§ 432B.466; 432B.4665

If the permanency plan for a child includes a request for the appointment of a guardian for the child, a governmental agency, a nonprofit corporation, or any interested person, including, without limitation, the agency that adopted the plan, may petition the court for the appointment of a guardian. A petition for the appointment of a guardian pursuant to this section:

- May not be filed before the court has determined that the child is in need of protection
- Must include the information required for a guardianship petition pursuant to § 159.044
- Must include a statement explaining why the appointment of a guardian, rather than the adoption of the child or the return of the child to a parent, is in the best interests of the child

The court may, upon the filing of a petition, appoint a person as a guardian for a child if:

- The court finds that:
 - » The proposed guardian is suitable and is not disqualified from guardianship pursuant to section 46 of 2017 act, ch. 172.
 - » The child has been in the custody of the proposed guardian for 6 months or more pursuant to a determination by a court that the child was in need of protection, unless the court waives this requirement for good cause shown.

- If the child is age 14 or older, the child consents to the guardianship.
- The court determines that the requirements for filing a petition have been satisfied.

Contents of a Guardianship Order

Citation: Rev. Stat. §§ 432B.4665; 432B.467(2)

A guardianship established pursuant to this section:

- Provides the guardian with sole legal and physical custody of the child
- Does not result in the termination of parental rights of a parent of the child
- Does not affect any rights of the child to inheritance, a succession, or any services or benefits provided by the Federal Government, this State, or an agency or political subdivision of this State.

If a court appoints a guardian for a child pursuant to § 432B.4665, the court may order a reasonable right of visitation to any person whose right to custody or visitation of the child was terminated as a result of the appointment of the guardian if the court finds that the visitation is in the best interests of the child.

Modification/Revocation of Guardianship

Citation: Rev. Stat. § 432B.468

The court shall retain jurisdiction to enforce, modify, or terminate a guardianship until the child reaches age 18.

Any person having a direct interest in a guardianship established pursuant to § 432B.4665 may petition the court to enforce, modify, or terminate an order concerning the guardianship. The court shall issue an order directing the appropriate agency that provides child welfare services to file a report and to make a recommendation in response to any motion to enforce, modify, or terminate an order concerning a guardianship established pursuant to § 432B.4665. The agency must submit the report to the court within 45 days after receiving the order of the court. Any motion to enforce, modify, or terminate an order concerning a guardianship established pursuant to § 432B.4665 must comply with the provisions set forth in sections 2 to 157, inclusive, of act 2017, ch. 172 for motions to enforce, modify, or terminate orders concerning guardianships.

A successor guardian may be appointed in accordance with the procedures set forth in sections 2 to 157, inclusive, of act 2017, ch. 172.

Kinship Guardianship Assistance

Citation: Rev. Stat. §§ 422A.650; 432B.622; 432B.623

The department shall establish a program to provide supportive assistance to qualifying relatives of children who provide care for and obtain the legal guardianship of those children. As a condition to the provision of assistance pursuant to this section, the child must:

- Have been placed in the care of a qualifying relative for not less than 6 months
- Consent to the guardianship if the child is age 14 or older

The qualifying relative must:

- Reside in the State
- Have attained the minimum age required by regulation
- Verify his or her relationship to the child
- File for and obtain court approval of the legal guardianship

The department shall establish and administer the Kinship Guardianship Assistance Program to provide assistance to a relative of a child. As a condition to the provision of assistance, a child must:

- Have been removed from his or her home pursuant to a written voluntary agreement or by court order
- For not less than 6 consecutive months, have resided with a relative of the child
- Not have returning home or adoption as options for permanent placement
- Demonstrate a strong attachment to the relative
- If the child is age 14 or older, be consulted regarding the guardianship arrangement

A relative of the child must:

- Demonstrate a strong commitment to caring for the child permanently
- Be a licensed foster care provider
- Enter into a written agreement for assistance with the child welfare agency before the relative is appointed as the legal guardian of the child
- Be appointed as the legal guardian of the child

If the sibling of an eligible child is not eligible for such assistance, the sibling may be placed with the eligible child upon approval of the child welfare agency and the relative. In such a case, payments may be made for the sibling as if the sibling is eligible for the program.

Links to Agency Policies

Nevada Division of Child and Family Services, Statewide Policy Manual, [Policy # 1003, Kinship Care](#) (PDF - 63 KB)

New Hampshire

Current Through July 2018

Definitions

Citation: Rev. Stat. § 169-C:3

The term 'guardian' means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and to be concerned about the general welfare of the child.

The term 'legal custody' means a status created by court order embodying the following rights and responsibilities, unless otherwise modified by court order:

- The right to determine where and with whom the child shall live
- The right to have the physical possession of the child
- The right and the duty to protect and constructively discipline the child
- The responsibility to provide the child with food, clothing, shelter, education, emotional security, and ordinary medical care

The rights and responsibilities of the custodian shall be exercised subject to the power, rights, duties, and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

The term 'residual parental rights and responsibilities' means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship, except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation, and responsibilities for support.

Purpose of Guardianship

Citation: Rev. Stat. § 463:1

It is the purpose of this chapter to secure for a child an environment of stability and security by providing for the appointment of a guardian of the person, when such appointment is in the best interests of the child. This chapter is designed to provide procedural and substantive safeguards for the rights of parents and their minor children. Implicit in this chapter shall be the recognition that the interests of a child are generally best promoted in the child's own home, unless the best interests of the child require substitution or supplementation of parental care and supervision.

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. §§ 463:12; 169-C:3

Except as otherwise expanded or limited by statute or order of court, a guardian of the person of a child has the powers and responsibilities of a parent regarding the child's support, care, and education, but a guardian is not personally liable for the child's expenses and is not liable to third persons by reason of the relationship for acts of the child. The guardian shall not be liable for injury to the child resulting from the negligent acts or omissions of third persons unless a parent would have been liable in the same circumstances.

A guardian may:

- Give any necessary consent or approval to enable the child to receive medical or other professional care, counsel, treatment, or service. However, no guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court
- Consent to the marriage or adoption of the child
- If reasonable under all of the circumstances, delegate to the child certain responsibilities for decisions affecting the child's well-being

The duty and authority of the guardian include, but are not necessarily limited to, the following:

- The authority to consent to marriage; enlistment in the armed forces of the United States; and major medical, psychiatric, and surgical treatment
- The authority to represent the child in legal actions
- The authority to make other decisions of substantial legal significance concerning the child
- The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order
- The rights and responsibilities of legal custody, except when legal custody has been vested in another individual or in an authorized agency

Qualifying the Guardian

Citation: Rev. Stat. § 463:5

In all guardianships of the person, except when an agency or institution is named as the proposed guardian, the court shall review the proposed guardian's record of criminal convictions maintained by the New Hampshire Division of State Police and any record of founded complaints of child abuse or neglect by the proposed guardian in the child abuse and neglect registry maintained by the Department of Health and Human Services.

Procedures for Establishing Guardianship

Citation: Rev. Stat. §§ 463:5; 463:8

Any person may nominate a guardian for a child in a will, by petition, or by written consent to a petition by another. A child age 14 or older or any person or authorized agency interested in the welfare of the child also may petition for appointment of a guardian. The petition shall set forth the following:

- Whether guardianship is being sought by the department as part of the permanent plan for a child in the department's custody pursuant to the Adoption and Safe Families Act of 1997
- Whether adoption of the child by the proposed guardian is contemplated

The petition shall include a statement describing specific facts concerning actions or omissions involving the child that are claimed to demonstrate that the guardianship is in the best interests of the child. The burden of proof shall be on the petitioner to establish by a preponderance of the evidence that guardianship is in the best interests of the child.

If a parent objects to the establishment of the guardianship, the court shall hold a hearing. The burden of proof shall be on the petitioner to establish by clear and convincing evidence that the best interests of the child require substitution of parental care and supervision to provide for the essential physical and safety needs of the child or to prevent specific, significant psychological harm to the child. If guardianship is sought by the child's grandparent as the result of the parent's substance use, the burden of proof shall be on the petitioner to establish by a preponderance of the evidence that a guardianship of the person is in the best interests of the child.

The consent of the child is not needed for the appointment of a guardian, but the court shall ascertain the child's preference and give to it such weight as may seem just. The court may appoint a guardian as requested if it finds that guardianship is in the best interests of the child and the person nominated is appropriate.

Contents of a Guardianship Order

Citation: Rev. Stat. §§ 463:8; 463:11; 463.13

When the court grants guardianship as part of the permanency plan for a child in the department's custody pursuant to the Adoption and Safe Families Act of 1997, the court shall so specify in its order.

Letters of guardianship shall be issued to the guardian and shall contain:

- The nature and scope of the guardianship
- Limitations imposed by the court on the guardian
- Whether the guardianship is part of the permanent plan for a child previously under the custody of the department pursuant to the Adoption and Safe Families Act of 1997

The appointment of a guardian of a child shall not relieve the child's parents, or any other persons liable for the support of the child, from their obligation to provide for such support. The court, at the time of such appointment or at any time thereafter, may order and require the parent(s) or other persons to contribute to the support and maintenance of the child in such amounts and at such times as the court determines to be just and reasonable.

The court may award reasonable visitation rights to the parent or parents. The presumption shall be in favor of liberal visitation rights absent a showing of harm to the child. If a party wishes to have any preexisting court visitation orders incorporated into the guardianship order, that party has the burden of providing said visitation orders to the court for its consideration. The court shall incorporate such visitation orders in its order, unless there has been a change in circumstances that warrants different visitation arrangements. In guardianships granted as part of the permanency plan for a child previously in the department's custody pursuant to the Adoption and Safe Families Act of 1997, the court may give the guardian discretion to determine visitation.

Modification/Revocation of Guardianship

Citation: Rev. Stat. §§ 463:15; 463:16

A guardianship of the person or of the estate of a minor shall terminate upon order of the court, the death of the minor, the minor's 18th birthday, a finding by the court that the minor has been emancipated under relevant State law, or the issuance of a final decree of adoption.

Any minor under guardianship of the person who is age 14 or older, or any person interested in the welfare of the minor, may petition for the termination of the guardianship of the person. The guardianship of the person shall be terminated upon a showing, by a preponderance of the evidence, that substitution or supplementation of parental care and supervision is no longer necessary to provide for the essential physical and safety needs of the minor, and that termination of the guardianship will not adversely affect the minor's psychological well-being.

In a proceeding to terminate a guardianship established by consent, the burden of proof shall shift to the guardian to demonstrate by clear and convincing evidence that substitution or supplementation of parental care and supervision is necessary. This provision shall not apply if guardianship of the person was granted to a grandparent as the result of the parent's substance abuse or dependence. In such cases, the burden of proof shall be on the parent to demonstrate by a preponderance of the evidence that substitution or supplementation of parental care and supervision is no longer necessary to provide for the essential physical and safety needs of the minor and termination of the guardianship will not adversely affect the minor's psychological well-being.

The court may from time to time, upon application of any person interested in the welfare of the minor, and with notice to all parties, revise or alter any prior orders or make a new order or decree relative to the guardianship of the person, of the estate, or both, as the best interests of the minor or the prudent management of the estate may require.

Kinship Guardianship Assistance

Citation: Rev. Stat. § 463:5

If the petition for guardianship was filed by the minor's grandparent, the court shall provide the grandparent with a brochure, prepared by the department, describing potential benefits for which a child under guardianship may be eligible through the State of New Hampshire. The department also shall post such information on its website.

Links to Agency Policies

New Hampshire Department of Health and Human Services, [A Resource Guide for New Hampshire Relative Caregivers](#) (PDF - 4,254 KB)

New Jersey

Current Through July 2018

Definitions

Citation: Ann. Stat. §§ 3B:12A-2; 30:4C-84; Admin. Code § 3A:20-1.3

The term 'caregiver' means a person over age 18, other than a child's parent, who has a kinship relationship with the child and has been providing care and support for the child, while the child has been residing in the caregiver's home, for either the last 12 consecutive months or 15 of the last 22 months. 'Caregiver' also could include a resource family parent as defined in § 30:4C-26.4.

'Family friend' means a person who is connected to a child or the child's parent by an established, positive psychological or emotional relationship that is not a biological or legal relationship.

'Kinship legal guardian' means a caregiver who is willing to assume care of a child due to parental incapacity, with the intent to raise the child to adulthood, and who is appointed the kinship legal guardian of the child by the court pursuant to § 3B:12A-1, et seq. A kinship legal guardian shall be responsible for the care and protection of the child and for providing for the child's health, education, and maintenance.

'Kinship relationship' means a family friend or a person with a biological or legal relationship with the child.

In regulation: The term 'relative' means any person, other than the child's parent, who is related to the child through blood, marriage, adoption, civil union, or domestic partnership, including a stepparent or a family friend.

Purpose of Guardianship

Citation: Ann. Stat. § 3B:12A-1

The legislature finds and declares that:

There is an increase in the number of children who cannot reside with their parents due to the parents' incapacity or inability to perform the regular and expected functions of care and support of the child.

An increasing number of relatives, including grandparents, find themselves providing care on a long-term basis to these children without court-approved legal guardianship status because the caregivers either are unable or unwilling to seek termination of the legal relationships between the birth parent and the child, particularly when it is the caregiver's own child or sibling who is the parent. In these cases, adoption of the child is neither feasible nor likely, and it is imperative that the State create an alternative, permanent legal arrangement for children and their caregivers. One such alternative arrangement, which does not require the termination of parental rights, is a court-awarded kinship legal guardianship that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver of certain parental rights, but retains the birth parents' rights to consent to adoption, the obligation to pay child support, and the parents' right to have some ongoing contact with the child.

In considering kinship legal guardianship, the State is seeking to add another alternative, permanent placement option, beyond custody, without rising to the level of termination of parental rights, for caregivers in relationships where adoption is neither feasible nor likely. Therefore, it is in the public interest to create a new type of legal guardianship that addresses the needs of children and caregivers in long-term kinship relationships.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 3B:12A-4

A kinship legal guardian shall have the same rights, responsibilities, and authority relating to the child as a birth parent, including, but not limited to:

- Making decisions concerning the child's care and well-being
- Consenting to routine and emergency medical and mental health needs
- Arranging and consenting to educational plans for the child
- Applying for financial assistance and social services for which the child is eligible
- Applying for a motor vehicle operator's license
- Applying for admission to college
- Assuming responsibility for activities necessary to ensure the child's safety, permanency, and well-being
- Ensuring the maintenance and protection of the child

A kinship legal guardian may not consent to the adoption of the child or a name change for the child. The birth parent of the child shall retain the authority to consent to the adoption of the child or a name change for the child.

The birth parent of the child shall retain the obligation to pay child support. The birth parent of the child shall retain the right to visitation or parenting time with the child, as determined by the court.

The appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance.

Qualifying the Guardian

Citation: Ann. Stat. §§ 30:4C-86; 3B:12A-6

Prior to the submission of a petition for appointment as a kinship legal guardian, the caregiver and any adult residing in the caregiver's household shall undergo the following:

- State and Federal criminal history records background checks
- A domestic violence central registry check
- A child abuse registry record check

In making its determination about whether to appoint the caregiver as kinship legal guardian, the court shall consider the following:

- The potential kinship legal guardian's ability to provide a safe and permanent home for the child
- The suitability of the kinship caregiver and the caregiver's family to raise the child
- The ability of the kinship caregiver to assume full legal responsibility for the child
- The commitment of the kinship caregiver and the caregiver's family to raise the child to adulthood
- The results from the child abuse record check
- The results from the criminal history records and domestic violence checks

In any case in which the caregiver petitioning for kinship legal guardianship, or any adult residing in the prospective caregiver's home, has a record of criminal history or a record of being subjected to a final domestic violence restraining order, the court shall review the record with respect to the type and date of the criminal offense or the provisions and date of the final domestic violence restraining order and make a determination as to the suitability of the person to become a kinship legal guardian. For the purposes of this paragraph, with respect to criminal history, the court shall consider convictions for offenses specified in § 30:4C-26.8(1)(c)-(e).

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 3B:12A-5; 3B:12A-6

A petition for the appointment of a kinship legal guardian shall include a kinship caregiver assessment, which shall include certification from the caregiver that the caregiver has been providing care and support for the child, while the child has been residing in the caregiver's home, for at least the last 12 consecutive months.

In making its determination about whether to appoint the caregiver as kinship legal guardian, the court shall consider the following:

- The best interests of the child
- The kinship caregiver assessment
- The recommendation of the Department of Children and Families, including any parenting time or visitation restrictions
- The wishes of the child's parents, if known to the court
- The wishes of the child if the child is age 12 or older, unless unique circumstances exist that make the child's age irrelevant

The court shall not award kinship legal guardianship of the child solely because of parental incapacity. The court shall appoint the caregiver as kinship legal guardian if, based upon clear and convincing evidence, the court finds that:

- Each parent's incapacity is of such a serious nature as to demonstrate that the parents are unable, unavailable, or unwilling to perform the regular and expected functions of care and support of the child.
- The parents' inability to perform those functions is unlikely to change in the foreseeable future.
- In cases in which the department is involved with the child, (a) the department exercised reasonable efforts to reunify the child with the birth parents and these reunification efforts have proven unsuccessful or unnecessary, and (b) adoption of the child is neither feasible nor likely.
- Awarding kinship legal guardianship is in the child's best interests.

Contents of a Guardianship Order

Citation: Ann. Stat. § 3B:12A-6

The court order appointing the kinship legal guardian shall specify, as appropriate, that:

- A kinship legal guardian shall have the same rights, responsibilities, and authority relating to the child as a birth parent, as specified in § 3B:12-4 above.
- The birth parent of the child retains the authority to consent to the adoption or a name change for the child.
- The birth parent of the child retains the obligation to pay child support.
- The birth parent of the child retains the right to visitation or parenting time with the child, as determined by the court.
- The appointment of a kinship legal guardian does not limit or terminate any rights or benefits derived from the child's parents, including, but not limited to, those relating to inheritance or eligibility for benefits or insurance.

Modification/Revocation of Guardianship

Citation: Ann. Stat. §§ 3B:12A-4; 3B:12A-6

Kinship legal guardianship terminates when the child reaches age 18 or when the child is no longer continuously enrolled in a secondary education program, whichever event occurs later, or when kinship legal guardianship is otherwise terminated.

An order or judgment awarding kinship legal guardianship may be vacated by the court prior to the child's 18th birthday if the court finds that the kinship legal guardianship is no longer in the best interests of the child or, in cases where there is an application to return the child to the parent, based upon clear and convincing evidence, the court finds that the parental incapacity or inability to care for the child that led to the original award of kinship legal guardianship is no longer the case and termination of kinship legal guardianship is in the child's best interests.

In cases in which the department was involved, when determining whether a child should be returned to a parent, the court may refer a parent for an assessment prepared by the department, in accordance with regulations adopted by the commissioner.

An order or judgment awarding kinship legal guardianship may be vacated by the court if, based upon clear and convincing evidence, the court finds that the guardian has failed or is unable, unavailable, or unwilling to provide proper care and custody of the child, or that the guardianship is no longer in the child's best interests.

Kinship Guardianship Assistance

Citation: Ann. Stat. § 30:4C-90; Admin. Code §§ 3A:20-1.6

The Department of Children and Families operates a Kinship Navigator program, which is a referral service designed to help kinship caregivers coordinate the various government and community resources that may be available to them.

The program works to ensure that individuals who may be eligible to become kinship legal guardians are aware of the eligibility requirements for and the responsibilities of kinship legal guardianship, and that both individuals who may be eligible to become kinship legal guardians and current kinship legal guardians are aware of the services available to kinship legal guardians in the State.

In regulation: When kinship legal guardianship is the permanent plan for the child, the Division of Youth and Family Services (DYFS) will advise a relative interested in the legal guardianship subsidy program of the eligibility requirements.

A child is eligible for the legal guardianship subsidy program when:

- A DYFS representative placed the child with a relative due to safety or risk of harm issues and DYFS had legal authority for placement through a court order.
- The relative is related to the child through blood, marriage, adoption, civil union, or domestic partnership or is a family friend.
- A DYFS representative made reasonable efforts when required to reunify the child and the parent.
- The DYFS representative determines that the child cannot be returned to his or her parent and that adoption is neither likely nor feasible.
- The relative or successor has obtained kinship legal guardianship, pursuant to the Kinship Legal Guardianship Act.
- The relative's home meets the licensing standards for a resource family home for as long as the subsidy is paid.

Links to Agency Policies

New Jersey Department of Children and Families, Child Protection and Permanency Policy Manual, [Vol. IV: Out-of-Home Placement](#), see chapter D, Kinship Legal Guardianship

New Mexico

Current Through July 2018

Definitions

Citation: Ann. Stat. § 40-10B-3

As used in the Kinship Guardianship Act:

- The term 'caregiver' means an adult, who is not a parent of a child, with whom a child resides and who provides that child with the care, maintenance, and supervision consistent with the duties and responsibilities of a parent of the child.
- The term 'kinship' means the relationship that exists between a child and a relative of the child, a godparent, a member of the child's Tribe or clan, or an adult with whom the child has a significant bond.
- The term 'relative' means an individual related to a child as a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, any person denoted by the prefix 'grand' or 'great,' or the spouse or former spouse of the persons specified.

Purpose of Guardianship

Citation: Ann. Stat. §§ 40-10B-2; 32A-4-31

It is the policy of the State that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance, and supervision to a child, it is the policy of the State that, whenever possible, a child should be raised by family members or kinship caregivers.

The Kinship Guardianship Act is intended to address those cases where a parent has left a child or children in the care of another for 90 consecutive days and that arrangement leaves the child or children without appropriate care, guidance, or supervision. The purposes of the Kinship Guardianship Act are to:

- Establish procedures to effect a legal relationship between a child and a kinship caregiver when the child is not residing with either parent
- Provide a child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally, and emotionally to the maximum extent possible, when the child's parents are not willing or able to provide appropriate care

The court may establish a permanent guardianship between a child and the guardian when the prospective guardianship is in the child's best interests and when:

- The child has been adjudicated as an abused or neglected child.
- The Children, Youth and Families Department has made reasonable efforts to reunite the parent and child, and further efforts by the department would be unproductive.
- Reunification of the parent and child is not in the child's best interests because the parent continues to be unwilling or unable to properly care for the child.
- The likelihood of the child being adopted is remote, or it is established that termination of parental rights is not in the child's best interests.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 40-10B-13

A guardian appointed for a child pursuant to the Kinship Guardianship Act has the legal rights and duties of a parent, except the right to consent to adoption of the child and except for parental rights and duties that the court orders retained by a parent.

Unless otherwise ordered by the court, a guardian appointed pursuant to the Kinship Guardianship Act has authority to make all decisions regarding visitation between a parent and the child.

Qualifying the Guardian

This issue is not addressed in the statutes and regulations reviewed.

Procedures for Establishing Guardianship

Citation: Ann. Stat. §§ 32A-4-31; 32A-4-32; 40-10B-5; 40-10B-8

In proceedings for permanent guardianship, the court shall give primary consideration to the physical, mental, and emotional welfare and needs of the child.

Any adult, including a relative or foster parent, may be considered as a permanent guardian, provided that if the child is in the legal custody of the department, the department grants consent to the guardianship. The court shall appoint a person nominated by the child, if the child is age 14 or older, unless the court finds the appointment contrary to the best interests of the child.

A motion for permanent guardianship may be filed by any party. A petition seeking the appointment of a guardian pursuant to the Kinship Guardianship Act may be filed only by the following:

- A kinship caregiver
- A caregiver who is age 21 or older, with whom no kinship with the child exists, and who has been nominated to be guardian of the child by the child who age 14 or older
- A caregiver designated formally or informally by a parent

A guardian may be appointed pursuant to the Kinship Guardianship Act only if:

- A parent of the child is living and has consented in writing to the appointment of a guardian and the consent has not been withdrawn.
- A parent of the child is living, but all parental rights in regard to the child have been terminated or suspended by prior court order.
- The child has resided with the petitioner without the parent for a period of 90 days or more immediately preceding the date the petition is filed, and a parent having legal custody of the child is currently unwilling or unable to provide adequate care, maintenance, and supervision for the child or there are extraordinary circumstances.
- No guardian of the child is currently appointed pursuant to the Uniform Probate Code.

Contents of a Guardianship Order

Citation: Ann. Stat. §§ 40-10B-8; 40-10B-13; 32A-4-32

As part of a judgment entered pursuant to the Kinship Guardianship Act, the court may order a parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay. The court may use the child support guidelines set forth in § 40-4-11.1 to calculate a reasonable payment.

A certified copy of the court order appointing a guardian pursuant to the Kinship Guardianship Act shall be satisfactory proof of the authority of the guardian, and letters of guardianship need not be issued.

A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings, or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

Modification/Revocation of Guardianship

Citation: Ann. Stat. §§ 40-10B-12; 32A-4-32

Any person, including a child who has reached his or her 14th birthday, may move for revocation of a guardianship created pursuant to the Kinship Guardianship Act. The person requesting revocation shall attach to the motion a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian. A transition plan shall take into consideration the child's age, development, and any bond with the guardian.

If the court finds that a preponderance of the evidence proves a change in circumstances and the revocation is in the best interests of the child, it shall grant the motion and:

- Adopt a transition plan proposed by a party or the child's guardian ad litem
- Propose and adopt its own transition plan
- Order the parties to develop a transition plan by consensus, if they will agree to do so

The court shall retain jurisdiction to enforce its judgment of permanent guardianship. Any party may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances, including:

- The child's parent is able and willing to properly care for the child.
- The child's guardian is unable to properly care for the child.

The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under age 14. The court shall appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is age 14 or older at the inception of the proceedings.

The court may revoke the order granting guardianship when a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship.

Kinship Guardianship Assistance

This issue is not addressed in the statutes and regulations reviewed.

Links to Agency Policies

Kinship guardianship is not addressed in regulation or agency policy.

New York

Current Through July 2018

Definitions

Citation: Soc. Serv. Law § 458-a

A 'prospective relative guardian' is a person who has been caring for the child as a fully certified or approved foster parent for at least 6 consecutive months prior to applying for kinship guardianship assistance payments and to whom any of the following apply:

- Is related to the child through blood, marriage, or adoption
- Is related to a half-sibling of the child through blood, marriage, or adoption and the person also is the prospective or appointed relative guardian of such half-sibling
- Is an adult with a positive relationship with the child, including, but not limited to, a stepparent, godparent, neighbor, or family friend

A 'relative guardian' is a person who was appointed as a guardian or permanent guardian for a child after entering into an agreement with a social services official for the receipt of payments and services in accordance with this title.

Purpose of Guardianship

Citation: Fam. Cr. Act § 1089-a

In determining whether the best interests of the child will be promoted by the granting of guardianship of the child to a relative who has cared for the child as a foster parent, the court shall give due consideration to the permanency goal of the child; the relationship between the child and the relative; whether the relative and the local Department of Social Services have entered into an agreement to provide kinship guardianship assistance payments for the child to the relative, and, if so, whether a fact-finding hearing pursuant to § 1051 of this chapter has occurred; and whether compelling reasons exist for determining that the return home of the child and the adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options.

A Guardian's Rights and Responsibilities

Citation: Fam. Cr. Act § 661

The permanent guardian of a child shall have the right and responsibility to make decisions, including issuing any necessary consents regarding the child's protection, education, care, and control; health and medical needs; and the physical custody of the person of the child, and may consent to the adoption of the child.

Qualifying the Guardian

Citation: Soc. Serv. Law § 458-b

A prospective relative guardian and any person age 18 or older living in the home of the prospective relative guardian who has not already been subject to a national and State criminal history record check as part of the process of the prospective relative guardian becoming a certified or approved foster parent must complete such a record check upon application for guardianship.

The social services official must inquire of the Office of Children and Family Services whether each prospective relative guardian and each person age 18 or older living in the home of the prospective relative guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment. If the prospective relative guardian or any other person older than age 18 residing in the home of the prospective relative guardian resided in another State in the 5 years preceding the application, a request must be made for child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each State of previous residence if such a request has not been made as part of the process of the prospective relative guardian becoming a certified or approved foster parent.

Procedures for Establishing Guardianship

Citation: Fam. Cr. Act §§ 661; 1089-a

When the permanency goal for a foster child is referral for legal guardianship, a petition shall be filed with the court by a fit and willing relative or other suitable person. The court presiding over the proceeding may consolidate the hearing of the guardianship petition with the dispositional hearing or permanency hearing, as applicable.

The court may issue an order of guardianship in response to a petition filed by a respondent parent, relative, or suitable person seeking guardianship of the child if:

- The court finds that granting guardianship of the child to the respondent parent, relative, or suitable person is in the best interests of the child and that the termination of the order placing the child in out-of-home care will not jeopardize the safety of the child.
- The court finds that granting guardianship of the child to the respondent parent, relative, or suitable person will provide the child with a safe and permanent home.
- The parents, the attorney for the child, the local department, and the person who has been the foster parent of the child for 1 year or more consent to the guardianship.

The court shall hold age-appropriate consultation with the child. If the youth has reached age 14, the court shall ascertain his or her preference for a suitable guardian. Notwithstanding any other section of law, when the youth is older than age 18, he or she shall consent to the appointment of a suitable guardian.

Contents of a Guardianship Order

Citation: Fam. Cr. Act § 1089-a

An order made in accordance with the provisions of this section shall set forth the required findings as described above. Notwithstanding any other provision of law, the court shall not issue an order of supervision nor may the court require the local department to provide services to the petitioner when granting guardianship.

Any order entered pursuant to this section shall conclude the court's jurisdiction over the proceeding, and the court shall not maintain jurisdiction over the proceeding for further permanency hearings.

Modification/Revocation of Guardianship

Citation: Fam. Cr. Act § 1089-a

As part of the order granting custody or guardianship to the relative or suitable person, the court may require that the local department and the attorney for the child receive notice of, and be made parties to, any subsequent proceeding to modify the order of custody or guardianship. If, however, the guardian and the local department have entered into an agreement to provide kinship guardianship assistance payments for the child, the order must require that the local department and the attorney for the child receive notice of, and be made parties to, any such subsequent proceeding involving custody or guardianship of the child.

Kinship Guardianship Assistance

Citation: Soc. Serv. Law § 458-b

A child is eligible for kinship guardianship assistance payments if the social services official determines the following:

- The child has been in foster care in the home of the prospective relative guardian for at least 6 consecutive months.
- Neither returning home nor adoption is an appropriate permanency option for the child.
- The child demonstrates a strong attachment to the prospective relative guardian, and the prospective relative guardian has a strong commitment to caring permanently for the child.
- Age-appropriate consultation has been held with the child:
 - » With respect to a child who is age 14 or older, the child has been consulted regarding the kinship guardianship arrangement.
 - » With respect to a child who is age 18 or older, the child has consented to the kinship guardianship arrangement.
- The first permanency hearing has been completed.

The financial status of the prospective relative guardian shall not be considered in determining eligibility for kinship guardianship assistance payments.

A prospective relative guardian who has been caring for an eligible foster child for at least 6 consecutive months and who intends to seek guardianship of the child may apply to the social services official who has custody of the child to receive kinship guardianship assistance payments, nonrecurring guardianship payments, and other applicable services and payments on behalf of the child. Applications shall only be accepted prior to issuance of letters of guardianship of the child to the relative guardian.

Links to Agency Policies

New York State Office of Children and Family Services:

- [Make an Informed Choice: Kin Caring for Children](#) (PDF - 428 KB)
- [Know Your Permanency Options: The Kinship Guardianship Assistance Program \(KinGAP\)](#) (PDF - 2,298 KB)

North Carolina

Current Through July 2018

Definitions

This issue is not addressed in the statutes and regulations reviewed.

Purpose of Guardianship

Citation: Pol. Man. § 1201(E)(3), App. B

When reunification efforts are determined to be contrary to the health, safety, or best interests of a child who is in the legal custody or placement authority of the county Department of Social Services, the county shall assess relative or kinship placements as a permanency option, including the child's birth father and paternal relatives. If the family is willing to provide a permanent home for the child but is not willing to adopt, then guardianship and custody should be offered to the family as alternatives.

Guardianship shall be considered only when reunification and adoption are ruled out as permanency options.

When placement with a relative for the purposes of foster care is made, consideration should be made as to the potential for that placement to become permanent through adoption or guardianship if reunification with the parent is not possible.

Guardianship will be considered when:

- The permanent plan for the child is neither reunification nor adoption.
- The child has been in agency custody for at least a year.
- The child has lived with this provider for at least 6 months.
- It has been determined that continued placement with this caregiver would be in the best interests of the child and meets the child's need for permanency and safety.
- The caregiver is willing to assume guardianship of the person of the child.

A Guardian's Rights and Responsibilities

Citation: Gen. Stat. § 7B-600

The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the child or may arrange a suitable placement for the child and may represent the child in legal actions before any court. The guardian may consent to certain actions on the part of the child in place of the parent, including marriage, enlisting in the Armed Forces of the United States, and enrollment in school. The guardian also may consent to any necessary remedial, psychological, medical, or surgical treatment for the child.

Qualifying the Guardian

Citation: Gen. Stat. § 7B-600; Pol. Man. § 1201(E)

Before conducting a review hearing, the court may order the county department to conduct an investigation and file a written report of the investigation regarding the suitability of the guardian.

In policy: The agency shall assess the suitability of the home for guardianship placement and shall recommend to the court based on their findings. Questions to consider when determining the recommendation for legal guardianship are as follows:

- What preplacement relationship existed between the child and the potential guardian and does the child have any attachment to them?
- Have the potential guardians been carefully evaluated? Is there a written assessment or home study?
- Have the potential guardians been included in the shared decision-making process?
- Have both maternal and paternal relatives been considered?
- Is placement with relatives or kin a way to protect the child's roots in the community?
- Will placement with a particular relative mean that the child must leave the community?
- Have sibling attachments been considered? Will placement with siblings be positive for this child?
- Is this potential guardian related to all the siblings and are they willing to take all the siblings whether related or not?
- Will this placement support the child's ethnic and cultural identity?
- Is the potential guardian willing to provide a home for this child through the child's minority?
- Are there the same issues in the extended family that existed with the parents?
- What will be the on-going relationship with the child's parents? Will there be lifelong conflicts with the child's parents or is there a possibility of an unofficial return to the child's parents?

Procedures for Establishing Guardianship

Citation: Gen. Stat. § 7B-600; Pol. Man. § 1201(E)(3)

In any case in which no parent appears in a hearing with the child or when the court finds it would be in the best interests of the child, the court may appoint a guardian of the person for the child. In any case in which the court has determined that the appointment of a relative or other suitable person as guardian of the person for a child is the permanent plan for the child and appoints a guardian under this section, the guardian becomes a party to the proceeding.

If the court appoints an individual guardian of the person pursuant to this section, the court shall verify that the person being appointed as guardian of the child understands the legal significance of the appointment and will have adequate resources to care appropriately for the child.

In policy: North Carolina law requires the judge who orders a child's placement or continued placement to consider whether an appropriate placement with a relative is available. If the judge finds that a relative is willing and able to provide proper care and supervision in a safe home, the judge must order placement of the child with the relative.

Legal guardianship can be given to a relative or any other person deemed suitable by the court. Persons other than relatives to consider include foster parents or adults who have a kinship bond with the child, even if they are not related by blood.

Contents of a Guardianship Order

Citation: Pol. Man. § 1201(E)(3)

Juvenile court guardianship, as described in § 7B-600, assigns legal authority for the guardian to act on behalf of the child without further department involvement but with continued supervision of the court. Guardianship received through the juvenile court does not confer authority over the disposition of a child's estate or management of the child's income.

Modification/Revocation of Guardianship**Citation: Gen. Stat. §§ 7B-600; 7B-1000; Pol. Man. § 1201(E)(3)**

The authority of the guardian shall continue until the guardianship is terminated by court order, the child is emancipated, or the child reaches the age of majority.

The court may terminate the guardianship only if:

- The court finds that the relationship between the guardian and the child is no longer in the child's best interests.
- The guardian is unfit.
- The guardian has neglected a guardian's duties.
- The guardian is unwilling or unable to continue assuming a guardian's duties.

Upon petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the child. The court may modify or vacate the order in light of changes in circumstances or the needs of the child. Notwithstanding the provision of this subsection, if a guardian of the person has been appointed for the child, and the court also has made findings that guardianship is the permanent plan for the child, the court shall proceed in accordance with § 7B-600(b).

In any case in which the court finds the child to be abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the child, until terminated by order of the court, or until the child is otherwise emancipated.

In policy: A guardian may resign from the position of guardian, but his or her authority cannot be removed unless he or she is determined by the court to be unfit.

Kinship Guardianship Assistance**Citation: Pol. Man. § 1201(E)(3)**

Persons assuming legal guardianship of children in the custody of a county child welfare agency are not eligible for State foster care board payments. They are eligible for child support paid by the parents. The child also may be eligible for Medicaid, since the guardian's income is not considered. Countable income includes Social Security benefits, child support payments, and, if applicable, guardianship subsidy.

If a person accepts guardianship of a child who was in foster care and later adopts that child, he or she will be able to receive adoption assistance payments on behalf of the child until the child is age 18.

Links to Agency Policies

North Carolina Department of Health and Human Services Policy Manual, [§ 1201\(E\)](#), [Permanent Placement Options](#)

North Dakota

Current Through July 2018

Definitions**Citation: Cent. Code § 27-20-02**

'Fit and willing relative or other appropriate individual' means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation, to be a qualified person and who consents in writing to act as a legal guardian.

The term 'relative' means:

- The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin
- An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described above
- An individual recognized in the child's community as having a relationship with the child similar to a relationship described above
- The child's stepparent

Purpose of Guardianship

Citation: Cent. Code § 27-20-48.1; Pol. Man. § 623-10-01-65

The court may establish a guardianship as a dispositional alternative if a child has been adjudicated as deprived, unruly, or delinquent.

In policy: Guardianship is considered only after other options such as return home, termination of parental rights, and adoption are ruled out.

A Guardian's Rights and Responsibilities

Citation: Cent. Code § 27-20-48.2

A guardian of a child has the powers and responsibilities of a legal custodian if there is a parent with remaining parental rights. If there is no parent with remaining parental rights, the guardian has the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment. A guardian is not liable to third persons by reason of the parental relationship for acts of the child. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

- The guardian must take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child.
- The guardian is empowered to facilitate the child's educational, social, or other activities and to authorize medical or other professional care, treatment, or advice.
- A guardian shall file an annual report with the court informing the court of the status or condition of the child and provide a copy of the report to the child. The report must include changes that have occurred since the previous reporting period and an accounting of the child's estate.

Qualifying the Guardian

Citation: Cent. Code § 30.1-27-06; Pol. Man. § 623-10-01-30

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. The court shall appoint a person nominated by the minor, if the minor is age 14 or older, unless the court finds the appointment contrary to the best interests of the minor.

In policy: Under § 27-20-47(1)(b), the court may appoint 'a fit and willing relative or other appropriate individual' as the child's legal guardian. 'Fit and willing relative or other appropriate individual' is defined as a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation, to be a qualified person and who consents in writing to act as a legal guardian.

Procedures for Establishing Guardianship

Citation: Cent. Code §§ 30.1-27-01; 30.1-27-04; 30.1-27-07

A person becomes a guardian of a minor upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order.

Notice of the time and place of the hearing of a petition for the appointment of a guardian of a minor is to be given to:

- The minor, if the minor is age 14 or older
- The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition
- Any living parent of the minor

Upon hearing, if the court finds that a qualified person seeks appointment, the venue is proper, the required notices have been given, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor. If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is age 14 or older.

Contents of a Guardianship Order

Citation: Cent. Code § 30.1-27-08; Pol. Man. §§ 623-10-20-10; 623-10-20-15

By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

In policy: Generally speaking, the guardian has the rights and responsibilities that a parent would ordinarily have. It may be helpful to think of parental rights and responsibilities as a bundle: In some cases, the guardian will have the entire bundle; in other cases, the court's order creating the guardianship may divide the bundle between the guardian and a parent or others, such as a grandparent. The division of the bundle of rights and responsibilities will depend on the facts of a given case, with the court being guided by the welfare and best interests of the minor. An order appointing a legal guardianship terminates any authority of a parent that is granted to the legal guardian under that order.

Parental child support responsibility continues with respect to a minor child who is subject to a guardianship order. If a child support order does not exist at the time the guardianship is granted, an order may subsequently be established to ensure that parents fulfill their parental obligations related to support of the child.

The child support obligation does not always end with termination of parental rights. Legal guardians, wards, and parents will need to refer to the order establishing the guardianship and to the order terminating parental rights, if any, to determine the status of a particular right or responsibility.

Modification/Revocation of Guardianship

Citation: Cent. Code §§ 27-20-48.3; 27-20-48.4

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian, or upon the child's death, adoption, marriage, or attainment of majority. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the child.

A guardian may petition for permission to resign. A petition for permission to resign may include a request for the appointment of a successor guardian. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

The director, the child who is age 14 or older, or any party to the proceeding in which the child's status was adjudicated may petition for the removal of a guardian on the grounds that the removal would be in the best interests of the child. A petition for removal may include a request for the appointment of a successor guardian.

After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate. If, at any time in the proceeding, the court determines that the interests of the child are, or may be, inadequately represented, it may appoint an attorney to represent the child, giving consideration to the preference of the child if the child is age 14 or older.

Kinship Guardianship Assistance

Citation: Pol. Man. §§ 623-10-01-25; 623-10-05-01; 623-10-05-05

It is possible to create a legal guardianship in which the ward does not reside with the guardian but lives in some other setting. This is not the intent of the Department of Human Services' subsidized guardianship program. To be eligible for the subsidized guardianship, the guardian must agree that the ward's permanent residence will be with the guardian. In certain instances, the ward may be briefly out of the home without affecting the subsidy, such as brief medical treatment.

Persons eligible for subsidy include the following:

- Foster youth age 12 and older for whom reunification and adoption have been ruled out as the permanency plan
- Youth who are legally free for adoption and do not wish to or cannot be adopted
- Youth in temporary custody whose parents are incapacitated or unwilling to have anything to do with planning for the child and whose parental rights will not be terminated.

Siblings also will be included if one member of the sibling group is age 12 or older. Eligibility is limited to children who have been in the State foster care system for at least 6 months and for whom the State has responsibility for maintenance payments.

Priority is given to youth age 16 and older. Sibling groups also will be given priority status if one member of the group is at least age 16.

In order to receive subsidy payments, the guardian must be at least age 21 and have received contingent approval for a subsidy for the child's needs prior to the guardianship appointment. Guardianship requires a court assessment and a background check.

Links to Agency Policies

North Dakota Department of Human Services, [Subsidized Guardianship Policy Manual](#)

Northern Mariana Islands

Current Through July 2018

Definitions

Citation: Commonwealth Code Tit. 8, § 2107(n)

The term 'guardian' means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

Purpose of Guardianship

This issue is not addressed in the statutes reviewed.

A Guardian's Rights and Responsibilities

Citation: Commonwealth Code Tit. 8, § 1421

A legal guardian appointed by the superior court shall have all the rights and powers, duties, and obligations of a legal guardian of the minor child and shall have a valid and effectual claim of custody of the minor child against every other person claiming custody of the minor child for the duration of the guardianship.

Qualifying the Guardian

Citation: Commonwealth Code Tit. 8, § 1421

The petitioner for guardianship of a minor child must be over age 18 and been a resident of the Commonwealth of the Northern Mariana Islands for 1 year prior to the date of petition.

The court must be satisfied that the living arrangement of the guardian and minor child are suitable. Factors the court may consider in evaluating whether a living arrangement is suitable include, but are not limited to, the size and number of bedrooms of the residence of the petitioner and the number of other minor children or family members living in the residence. The court may order a home study by the Department of Youth Services or a Family Service Division prior to granting a petition under this section.

Procedures for Establishing Guardianship

Citation: Commonwealth Code Tit. 8, § 1421

The court may appoint, for a term or indefinitely subject to review, an adult to serve as a legal guardian of a minor child only after the following conditions are satisfied:

- A petition is filed with the court by the proposed guardian stating, under penalty of perjury, the names, dates of birth, and residences of the minor child and the proposed guardian, and the names and whereabouts of any surviving natural or legal parents, grandparents, or siblings of the minor child.
- A statement is affixed to the petition indicating who currently has custody of the minor child and describing the reasons a guardianship is necessary.
- The affidavits of any surviving natural or legal parents are affixed to the petition, sworn under penalty of perjury, indicating their consent to the guardianship arrangement.
- An affidavit by the petitioner is affixed to the petition attesting that the guardianship arrangement is not an attempt to avoid or circumvent Commonwealth immigration law.
- The minor child is not present in the Commonwealth pursuant to a tourist visa.

The court may grant the petition if, after a hearing, it finds that the guardianship arrangement is in the best interests of the child and is not in violation of the law of the Commonwealth.

Contents of a Guardianship Order

This issue is not addressed in the statutes reviewed.

Modification/Revocation of Guardianship

Citation: Commonwealth Code Tit. 8, § 1421

The superior court may, in its discretion, order that a guardianship be reviewed periodically on a schedule set by the court.

The superior court may terminate a guardianship if, upon review, it finds that the guardianship is no longer in the best interests of the minor child. A guardian who has a guardianship terminated shall have all normal avenues of appeal.

Kinship Guardianship Assistance

This issue is not addressed in the statutes reviewed.

Links to Agency Policies

Kinship guardianship is not addressed in agency policy.

Ohio

Current Through July 2018

Definitions

Citation: Rev. Code §§ 5107.02; 2151.011; 5101.85

'Custodian' means an individual who has legal custody, as defined below, of a minor child.

'Guardian' means an individual who is granted authority by a probate court to exercise parental rights over a minor child to the extent provided in the court's order and subject to residual parental rights of the child's parents.

'Specified relative' means the following individuals who are age 18 or older:

- The following individuals related by blood or adoption:
 - » Grandparents, including grandparents with the prefix 'great,' 'great-great,' or 'great-great-great'
 - » Siblings
 - » Aunts, uncles, nephews, and nieces, including such relatives with the prefix 'great,' 'great-great,' 'grand,' or 'great-grand'
 - » First cousins and first cousins once removed
- Stepparents and stepsiblings
- Spouses and former spouses of individuals named above

'Legal custody' means a legal status that vests in the custodian the right to have physical care and control of the child and to assume the responsibilities listed below.

The term 'residual parental rights, privileges, and responsibilities' means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the child, including, but not necessarily limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.

'Kinship caregiver' means any of the following who is age 18 or older and is caring for a child in place of the child's parents:

- Any individual meeting the definitions of 'specified relative' above
- A legal guardian of the child
- A legal custodian of the child

Purpose of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

A Guardian's Rights and Responsibilities

Citation: Rev. Code § 2151.011

'Legal custody' means a legal status that vests in the custodian the right and duty:

- To have physical care and control of the child
- To determine where and with whom the child shall live
- To protect, train, and discipline the child
- To provide the child with food, shelter, education, and medical care

The rights and duties of the custodian are all subject to any residual parental rights, privileges, and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally, unless otherwise authorized by any section of the Revised Code or by the court.

Qualifying the Guardian

Citation: Admin. Code § 5101:2-42-18

A public or private children's services agency may approve placement with the following substitute caregivers if the placement is determined to be in the child's best interests and the substitute caregivers are not certified through the Ohio Department of Job and Family Services:

- A relative by blood or marriage who, in accordance with §§ 5103.02 and 5103.03, is exempt from certification and is being considered as a substitute caregiver
- A nonrelative who has a relationship with the child and/or family and who, in accordance with § 5153.161, is approved by the court

Prior to placing the child with the relative or nonrelative substitute caregiver, the agency shall do the following to approve the placement:

- Collect identifying information on the prospective caregiver and all household members
- Ensure that a search of the statewide automated child welfare information system has been completed for the prospective caregiver and adult household members
- Assess the safety, cleanliness, and suitability of the home
- Assess the prospective caregiver's ability and willingness to provide care and supervision of the child and to provide a safe and appropriate placement for the child
- Require all adults in the home to identify any prior agency involvement
- Collect fingerprints from the prospective caregiver and all adults residing within the home in order to request State and Federal criminal records checks
- Require the prospective caregiver to submit written notification if a person whom is at least age 12, but less than age 18, residing in the home has been convicted of or pleaded guilty to any offenses described in § 5103.0319, or has been adjudicated to be a delinquent child for committing an act that if committed by an adult would have constituted such a violation

Procedures for Establishing Guardianship

Citation: Rev. Code § 2151.353

If a child is adjudicated an abused, neglected, or dependent child, the court may award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A proposed legal custodian shall be awarded legal custody of the child only if the person signs a statement of understanding for legal custody that contains at least the following provisions:

- That it is the intent of the person to become the legal custodian of the child and the person is able to assume legal responsibility for the care and supervision of the child
- That the person understands that legal custody of the child in question is intended to be permanent in nature and that as the custodian the person will be responsible for the child until the child reaches the age of majority

- That the parents of the child have residual parental rights, privileges, and responsibilities, including, but not limited to, the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support
- That the person understands that the person must be present in court for the dispositional hearing in order to affirm the person's intention to become legal custodian, to affirm that the person understands the effect of the custodianship before the court, and to answer any questions that the court or any parties to the case may have

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Rev. Code §§ 5101.802; 5101.851

The purpose of the kinship permanency incentive program is to promote permanency for a minor child in the legal and physical custody of a kinship caregiver. The program shall provide an initial one-time incentive payment to the kinship caregiver to defray the costs of initial placement of the child in the kinship caregiver's home. The program may provide additional permanency incentive payments for the child at 6-month intervals, based on the availability of funds.

A kinship caregiver may participate in the program if all of the following requirements are met:

- The kinship caregiver applies to a public children services agency in accordance with the application process established in administrative rules.
- A juvenile court issues an order granting legal custody to the kinship caregiver, or a probate court grants guardianship to the kinship caregiver. A temporary court order is not sufficient to meet this requirement.
- The kinship caregiver is either the child's custodian or guardian.
- The child resides with the kinship caregiver pursuant to a placement approved by the agency.
- Excluding any income excluded under the rules, the gross income of the kinship caregiver's family, including the child, does not exceed 300 percent of the Federal poverty guidelines.

The department may establish a statewide program of kinship care navigators to assist kinship caregivers who are seeking information or assistance in obtaining services and benefits available at the State and local level. The program shall provide to kinship caregivers information and referral services and assistance obtaining support services, including the following:

- Publicly funded child care
- Respite care
- Training for caring for children with special needs
- A toll-free telephone number that may be called to obtain basic information about the rights of and services available to kinship caregivers
- Legal services

Links to Agency Policies

Ohio Administrative Code § 5101:2-40-04: [Kinship Permanency Incentive \(KPI\) Program](#)

Oklahoma

Current Through July 2018

Definitions

Citation: Ann. Stat. Tit. 10A, § 1-1-105

The term 'kinship care' means full-time care of a child by a kinship relation. 'Kinship guardianship' means a permanent guardianship as defined in this section. 'Kinship relation' or 'kinship relationship' means relatives, stepparents, or other responsible adults who have a bond or tie with a child and/or to whom has been ascribed a family relationship role with the child's parents or the child. In cases in which the Indian Child Welfare Act applies, the definitions contained in 25 U.S.C., § 1903 shall control.

The term 'permanent custody' means the court-ordered custody of an adjudicated deprived child when a parent-child relationship no longer exists due to termination of parental rights or due to the death of a parent or parents.

'Permanent guardianship' means a judicially created relationship between a child, a kinship relation of the child, or other adult established pursuant to the provisions of § 1-4-709 of this title.

The term 'relative' means a grandparent, great-grandparent, brother or sister of whole or half blood, aunt, uncle, or any other person related to the child.

Purpose of Guardianship

Citation: Ann. Code Tit. 10A, § 1-4-709

The court may establish a permanent guardianship between a child and a relative or other adult if the guardianship is in the child's best interests and all of the following conditions are substantially satisfied:

- The child has been adjudicated to be a deprived child.
- The parent has:
 - » Consented to the guardianship
 - » Had his or her parental rights terminated
 - » Failed to substantially correct the conditions that led to the adjudication of the child
 - » Been adjudicated as incompetent or incapacitated by a court
 - » Abandoned the child
 - » Not been identified or located despite reasonably diligent efforts to ascertain his or her whereabouts
 - » Died
- The child consents to the guardianship if the court finds the child to be of sufficient intelligence, understanding, and experience to provide consent.
- Termination of the parent's rights is either not legally possible or not in the best interests of the child or adoption is not the permanency plan for the child.
- The child and the prospective guardian do not require protective supervision or preventive services to ensure the stability of the guardianship.
- The prospective guardian is committed to providing for the child until the child reaches the age of majority and to preparing the child for adulthood and independence.
- The prospective guardian agrees that he or she will not return the child to the care of the person from whom the child was removed or allow visitation without the approval of the court.
- The child has been residing or placed with the proposed guardian for at least the 6 preceding months, or the permanent guardian is a relative with whom the child has a relationship.

In proceedings for permanent guardianship, the court shall give primary consideration to the physical and behavioral health needs of the child.

A Guardian's Rights and Responsibilities

Citation: Ann. Code Tit. 10A, § 1-4-709

Unless otherwise set forth in the final order of permanent guardianship, a permanent guardian is vested with all of the rights and responsibilities as set forth in title 30 of the Oklahoma Statutes relating to the powers and duties of a guardian of a minor, other than those rights and responsibilities retained by the child's parent, if any, that are set forth in the decree of permanent guardianship.

Qualifying the Guardian

Citation: Ann. Code Tit. 10A, §§ 1-4-709(C); 1-4-710

A permanent guardianship shall not be permitted if the prospective guardian would be denied placement as a prospective foster or adoptive parent or if the prospective guardian is subject to the Oklahoma Sex Offenders Registration Act or living with an individual subject to the Oklahoma Sex Offenders Registration Act.

When the child is in the custody of the Department of Human Services, the department shall complete a home study of the proposed guardian's home and provide a report to the court regarding the suitability of the proposed guardian and whether guardianship is in the best interests of the child. The department shall develop rules in furtherance of the duties imposed by this

subsection. However, the prospective guardian shall be responsible for obtaining the home study if the child is not in the custody of the department.

The findings of the home study shall be set forth in a written report provided to the court, the district attorney, the child, and the guardian ad litem, if any, before the hearing. The court may require additional information as necessary to make an appropriate decision regarding the permanent guardianship.

Before issuing an order of permanent guardianship, the court shall find, by clear and convincing evidence, that the proposed permanent guardian:

- Is emotionally, mentally, physically, and financially suitable to become the permanent guardian
- Has expressly committed to remain the permanent guardian for the duration of the child's minority
- Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian

Procedures for Establishing Guardianship

Citation: Ann. Code Tit. 10A, § 1-4-710

A motion for permanent guardianship shall be filed by the district attorney or child's attorney. The motion shall include the following:

- The name and date of birth of the child
- The facts and circumstances supporting the grounds for permanent guardianship
- The name and address of the prospective guardian and a statement that the prospective guardian agrees to accept the duties and responsibilities of guardianship
- The relationship of the child to the prospective guardian
- That the prospective guardian understands that the guardianship is intended to be permanent and that the person will be responsible as the guardian until the child reaches the age of majority
- Whether the child has resided with the prospective guardian prior to the motion being filed, and, if so, the length of time and the circumstances surrounding the child's stay
- Whether there exists a loving, emotional tie between the child and the prospective guardian

Notice of the hearing shall be served on the parties, the department, and the guardian ad litem of the child, if any. Notice shall also be sent to the Tribe of an Indian child. Notice shall not be required to the parent whose rights have been terminated.

Before issuing an order of permanent guardianship, the court shall find, by clear and convincing evidence, all of the following:

- The parent is unfit or unavailable to provide adequate care for the child.
- Termination of the rights of the parent is either not legally possible or not in the best interests of the child, or adoption is not the permanency plan for the child.
- The child has resided with the permanent guardian for at least 6 months, or the permanent guardian is a relative with whom the child has a relationship.
- A permanent guardianship is in the best interests of the child.

Contents of a Guardianship Order

Citation: Ann. Code Tit. 10A, § 1-4-710

A decree of permanent guardianship divests the parents of legal custody or guardianship of the child, but is not a termination of parental rights.

Upon finding that grounds exist for a permanent guardianship, the court may also order visitation with the parent, siblings, or other relatives of the child if such contact would be in the child's best interests, as well as any other provision necessary to provide for the child's continuing safety and well-being. The court shall order the parents to contribute to the support of the child pursuant to child-support guidelines as provided for in title 43, §§ 118 and 119.

An order appointing a permanent guardian shall:

- Require that the placement be reviewed within 1 year after transfer and may require the permanent guardian to submit any records or reports the court deems necessary for purposes of that review
- Divest the department of legal custody and supervision of the child and release the department from any further responsibility for the custody or supervision of the child

- Not require periodic reviews by the court thereafter if the parties agree with the assent of the court that the reviews are not necessary to serve the best interests of the child, unless periodic reviews are otherwise required by the court

Unless periodic reviews are required, the court may close the case, provided the order of permanent guardianship shall remain in full force and effect, subject to the provisions of this Code.

Modification/Revocation of Guardianship

Citation: Ann. Code Tit. 10A, § 1-4-711

A motion for modification or termination of a permanent guardianship may be filed when there has been a substantial change of material circumstances including, but not limited to, the following:

- The parent of the child is presently able and willing to properly care for the child.
- The permanent guardian of the child is unable to properly care for the child.
- The child has been abused or neglected while in the care of the permanent guardian.
- The permanent guardian has died.

The court may modify or terminate the order granting permanent guardianship upon a finding by clear and convincing evidence that there has been a substantial change in material circumstances and that a modification or termination of the permanent guardianship is in the child's best interests.

The court shall appoint a guardian ad litem for the child in any proceeding for modification or termination of a permanent guardianship.

When the termination of a permanent guardianship is granted for reason of the guardian's abuse, neglect, death, or inability to care for the child, the court shall order the child returned to the legal custody of the department pending further hearing. The department shall develop a new permanency plan on behalf of the child, which shall be presented to the court within 30 days of the date that the permanent guardianship is terminated.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been modified or terminated and shall be entitled to participate in the new permanency-planning hearing where the court shall order a new permanency plan appropriate to meet the needs of the child.

Kinship Guardianship Assistance

Citation: Admin. Code § 340:75-6-31.4

Guardianship assistance may be funded through the Temporary Assistance for Needy Families (TANF) Supported Permanency Program, the Title IV-E Subsidized Guardianship Program, or the State.

TANF Supported Permanency Program assistance includes the following:

- A limited monetary reimbursement for legal fees and costs
- A monthly payment standard for the child
- A Medicaid card for the child's medical care
- An assigned Adult and Family Services worker who provides referrals for services, when needed

The Title IV-E Subsidized Guardianship agreement outlines the assistance provided to the relative that includes the following:

- A limited monetary reimbursement for legal fees and costs incurred in the transfer of legal responsibility of the child to the relative
- A monthly payment standard for the child
- The manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the child's needs
- A Medicaid card for the child
- The additional services and assistance for which the child and relative guardian are eligible under the agreement
- The procedure by which the relative guardian applies for additional services
- Assurance the agreement will remain in effect if the relative guardian moves to another State

A guardianship may be established with State-funded assistance when the child is not eligible for the TANF Supported Permanency Program or Title IV-E Subsidized Guardianship and the deputy director for programs, for good cause, approves State-funded payments to the guardian for the benefit of the child. The State-funded benefit is a monthly payment standard for the child.

Links to Agency Policies

Oklahoma Department of Human Services:

- Policy 340:75-6-31.4, [Legal Guardianship](#)
- [Bridge Resource Family Handbook](#) (PDF - 4,494)

Oregon

Current Through July 2018

Definitions

Citation: Admin. Rules § 413-070-0000

'Guardian' means an individual who has been granted guardianship of a child through a judgment of the court.

The term 'relative' applies to the following individuals:

- A blood relative or half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great
- A sibling, including a person with a sibling relationship to the child through a putative father
- An aunt, uncle, nephew, niece, first cousin, and first cousin once removed
- A spouse of anyone listed above, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death
- A person defined as a relative by the law or custom of the Tribe if the child is an Indian child or in the legal custody of a Tribe
- An individual defined as a relative of a refugee child
- A stepparent or former stepparent, if the child had a relationship with the former stepparent prior to the most recent episode of department custody; a stepbrother; or a stepsister
- The registered domestic partner or a former registered domestic partner of the child's parent, if the child had a relationship with the former domestic partner prior to the most recent episode of department custody
- The adoptive parent of a sibling of the child
- The unrelated legal or biological parent of a half-sibling of the child when the half-sibling is living with the unrelated legal or biological parent
- A person not related to the child who is identified as a member of the family by the child and has had an emotionally significant relationship with the child prior to the most recent episode of department custody

A 'relative caregiver' is an individual who operates a home that has been approved by the department to provide care for a related child.

'Substitute caregiver' means a relative caregiver, foster parent, or provider authorized to provide care to a child in the legal or physical custody of the department.

Purpose of Guardianship

Citation: Admin. Rules § 413-070-0660

The Department of Human Services may consider guardianship as a permanency plan for a child in the care or legal custody of the department based on the individual safety, permanency, and well-being needs of the child, when the department has determined:

- The child is unable to safely return to the home of a parent.
- Adoption is not an appropriate plan based on the best interests of the child.

When considering guardianship as the permanency plan, the caseworker must:

- Consult with the child who is age 14 or older
- Seek input from the child as developmentally appropriate, regardless of the age of the child
- Assess the parents' acceptance of guardianship as a permanency plan, their desire for continued contact with the child, and how this will impact the plan

A Guardian's Rights and Responsibilities

Citation: Rev. Stat. §§ 419B.376; 419B.379

A person, agency, or institution having guardianship of a ward by reason of appointment by the court has the duties and authority of a guardian of the ward, including, but not limited to, the following:

- To authorize surgery for the ward
- To authorize the ward to enlist in the Armed Forces of the United States
- To consent to the ward's marriage
- To consent to the adoption of the ward
- To make other decisions concerning the ward of substantial legal significance
- To make such reports and to supply such information to the court as the court may from time to time require

A person appointed guardian of the ward by the court is guardian only and not a conservator of the estate of the ward, unless that person also is appointed conservator of the ward's estate in a protective proceeding as provided in Chapter 125.

Qualifying the Guardian

Citation: Rev. Stat. § 419B.369; Admin. Rules § 413-070-0665

When a child is in the legal custody of the department, the department shall conduct a guardianship study of the proposed guardian's home and provide a report to the court regarding the suitability of the proposed guardian and whether guardianship is in the child's best interests.

When a child is not in the custody of the department, the court may order the proposed guardian to obtain, at his or her expense, a guardianship study of his or her home.

In regulation: In order to be considered as a potential guardian, the substitute caregiver must:

- Have a current certificate of approval from the department, a child-placing agency, or a participating Tribe
- Be able to maintain a stable relationship with the child and function effectively without department supervision
- Have an updated home study describing how the caregiver's skills and abilities meet the child's best interests and need for safety and permanency
- Have adequate means of financial support and connections to community resources
- Have a strong commitment to caring permanently for the child

The caseworker must complete all of the following:

- Assess the ability of the caregiver to ensure the child's safety, permanency, and well-being
- Assess the commitment of the caregiver to raise the child
- Provide the caregiver with information regarding the duties and responsibilities of a guardian
- Assess whether the caregiver and the child can maintain a stable relationship and function effectively without department supervision
- Consult with the caregiver regarding guardianship assistance and inform the caregiver of the eligibility requirements of guardianship assistance

Procedures for Establishing Guardianship

Citation: Rev. Stat. §§ 419B.365; 419B.366

At any time after a child is placed under court jurisdiction, but prior to filing or after dismissal of a petition for termination of the parent's rights, a party may file a petition for permanent guardianship. The grounds for granting a permanent guardianship are the same as those for termination of parental rights.

The court shall grant a permanent guardianship if it finds by clear and convincing evidence that:

- The grounds cited in the petition are true.
- It is in the best interests of the child that the parent never have physical custody of the child, but that other parental rights and duties should not be terminated.

If an Indian child is involved, the permanent guardianship must be in compliance with the Indian Child Welfare Act. The facts supporting any finding made to establish a permanent guardianship for an Indian child, including the finding that continued custody by the parents or Indian custodian would result in serious emotional or physical harm to the Indian child, must be established beyond a reasonable doubt.

If the court has approved a plan of guardianship under § 419B.476, the court may grant the motion for guardianship if the court determines, after a hearing, that:

- The child cannot safely return to a parent within a reasonable amount of time.
- Adoption is not an appropriate plan for the child.
- The proposed guardian is suitable to meet the needs of the child and is willing to accept the duties and authority of a guardian.
- Guardianship is in the child's best interests. In determining whether guardianship is in the child's best interests, the court shall consider the child's wishes.

Unless vacated under § 419B.368, a guardianship established under this section continues as long as the child is subject to the court's jurisdiction.

Contents of a Guardianship Order

Citation: Rev. Stat. § 419B.367

Upon granting a motion for guardianship, the court shall issue letters of guardianship to the guardian. A guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship grant the authority and duties of guardian for the child, including legal custody of the child.

In the order appointing the guardian, the court shall require the guardian to file with the court a written report within 30 days after each anniversary of appointment and may:

- Specify the frequency and nature of visitation or contact between relatives, including siblings, and the child, if the court determines that visitation or contact is in the child's best interests
- Enter an order for child support
- Make any other order to provide for the child's continuing safety and well-being

Except as otherwise limited by the court, a person appointed guardian has legal custody of the child and the duties and authority of legal custodian and guardian. A guardian is not liable to third persons for acts of the ward solely by reason of being appointed guardian.

Modification/Revocation of Guardianship

Citation: Rev. Stat. § 419B.368

The court may modify a guardianship order if the court determines that doing so would be in the child's best interests.

The court may vacate a guardianship order, return the child to the custody of a parent, and make any other order the court is authorized to make under this chapter if the court determines that:

- It is in the child's best interests to vacate the guardianship.
- The conditions and circumstances that gave rise to the establishment of the guardianship have been satisfactorily addressed.
- The parent is presently able and willing to adequately care for the child.

The court may vacate a guardianship order after determining that the guardian is no longer willing or able to fulfill the duties of a guardian. In determining whether it is in the child's best interests to modify or vacate a guardianship, the court shall consider, but is not limited to considering:

- The child's emotional and developmental needs
- The child's need to maintain existing and form new attachments and relationships, including those with the birth family
- The child's health and safety
- The child's wishes

If a guardianship is established under §§ 419B.366 and 419B.371, the court shall conduct a court review no later than 60 days before the child reaches age 18. At the hearing, the court shall inform the child that after reaching age 18 the child may not be placed in substitute care in the legal custody of the department.

Kinship Guardianship Assistance**Citation: Admin. Rules §§ 413-070-0917; 413-070-0000**

To be eligible for title IV-E guardianship assistance, a child must meet all of the following:

- Be a United States citizen or qualified noncitizen
- Have resided in the home of the potential guardian for at least 6 consecutive months during which the potential guardian was fully licensed as a foster family home
- Be placed with the potential guardian who meets the definition of a relative, as defined by the rules
- Demonstrate a strong attachment to the potential guardian
- Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child
- Be eligible for title IV-E foster care maintenance payments
- Be in the care or custody of the department or participating Tribe
- Have special needs or be placed with a potential guardian who indicates an economic need to care for the child
- Be consulted regarding the guardianship when the child is age 14 or older

A child who is ineligible for title IV-E guardianship assistance may be eligible for State-funded guardianship assistance.

A stepparent is considered a parent and not a relative for the purpose of eligibility for guardianship assistance, unless a petition for annulment, dissolution, or separation has been filed, or the marriage has been terminated by divorce or death.

A foster parent may only be considered a relative for the purpose of eligibility for guardianship assistance when:

- There is a compelling reason why adoption is not an achievable permanency plan.
- The foster parent is currently caring for a child who has a permanency plan or concurrent permanent plan of guardianship.
- The foster parent has cared for the child for at least 12 of the past 24 months.
- The department or Tribe has approved the foster parent for consideration as a guardian.

Links to Agency Policies

Oregon Administrative Code, [Chapter 413 - Child Welfare Programs](#), select Division 70, Substitute Care; Division 100, Substitute Care - Payments.

Oregon Department of Human Services:

- Policy # 413-070-0651 through 0670, [Guardianship as a Permanency Option](#) (PDF - 130 KB)
- Policy # 413-100-0000 through 0345, [Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility](#) (PDF - 231 KB)

Pennsylvania

Current Through July 2018

Definitions**Citation: Cons. Stat. Tit. 42, § 6302; Pol. # 3130-10-02/3140-10-03; Benchbook § 11.4**

The term 'custodian' means a person other than a parent or legal guardian who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.

In policy: 'Permanent legal custodianship' (PLC) is a permanency option for a child who is in the custody of the county agency and who is placed in substitute care.

A 'relative' is a person who is related by blood, marriage, or adoption within the fifth degree of kinship to the child, including great-great-grandparents and first cousins once removed (children of first cousins).

The term 'kinship' encompasses those relationships that fall under Pennsylvania's current definition of kin that exists in other areas of practice and policy, including existing relationships with a child that meets at least one of the following:

- A relative through blood, marriage, or adoption
- A godparent as recognized by an organized church
- A member of the child's Indian Tribe, nation, or clan
- An individual with a significant, positive relationship with the child or family

An individual with a significant, positive relationship with the child or family would be a person who knew the child or family prior to the execution of the PLC agreement. This may include relationships established with a teacher, current or former resource parent, etc.

A 'subsidized permanent legal custodianship (SPLC)' is a permanent legal custodianship arrangement where a Federal, State, or county subsidy is provided to the custodian for the cost of providing care to a child.

In court rules: Legal custodianship in Pennsylvania is the equivalent of legal guardianship under the Social Security Act (42 U.S.C. § 675(7)) and is a formal legal arrangement that transfers custody of a minor child from the natural parent to a relative or other caregiver.

Purpose of Guardianship

Citation: Policy Bulletin # 3130-10-02/3140-10-03; Benchbook § 11.4

PLC is an available option for a child to achieve permanency. While it is not appropriate for all children, especially very young children, PLC may serve other children very well. For those children with strong bonds to parents who are unable to care for them, due to ongoing physical or behavioral health issues, or for older children who have been appropriately counseled about adoption and remain adamantly against it, permanency through placement with a permanent legal custodian may be the most optimal consideration, especially when the custodian is a relative, allowing the child to remain in his or her family system.

Parental consent is not required for a PLC and parental rights need not be terminated. When appropriate, the parent should be involved in the development of the child's placement, permanency, and visitation plan, as well as provide financial support.

In court rules: In the hierarchical scheme of permanency options, PLC is less desirable than reunification or adoption but preferable to permanent relative placement and another planned permanent living arrangements. It has a higher preference because it provides permanency and stability without ongoing State oversight, while often maintaining ties with siblings, extended family members, and the biological parents.

A Guardian's Rights and Responsibilities

Citation: Cons. Stat. Tit. 42, § 6357; Benchbook § 11.4

A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child; the right to determine the nature of the care and treatment of the child, including ordinary medical care; and the right and duty to provide for the care, protection, training, education, and the physical, mental, and moral welfare of the child. An award of legal custody shall be subject to the conditions and limitations of the order and to the remaining rights and duties of the parents or guardian of the child as determined by the court. The court may award legal custody under this section on a temporary basis to an individual or agency under § 6351(a)(2) (relating to disposition of dependent child) or permanent basis to an individual under section 6351(a)(2.1).

In court rules: The legal custodian's rights and duties include the following:

- The right and duty to make decisions on behalf of the child, including decisions regarding the child's travel, driver's license, marriage, and enlistment in the armed forces
- The right to petition for child support from the child's parent
- The obligation to pay legal expenses related to a parent's request to change custody or visitation

The parental rights and duties include the following:

- The right to visitation when it does not affect the health and safety of the child
- The right to petition for custody of the child
- The right to pass on property to the child
- The duty to pay child support

Qualifying the Guardian

Citation: Cons. Stat. Tit. 23, § 6344; Admin. Code Tit. 55, §§ 3700.66; 3700.67

The child-placing agency must have assessed the ability of the prospective guardian to provide a safe home for the child. The approval process must include conducting State and Federal criminal records checks and a check of the State child abuse and neglect central registry.

In regulation: A determination must be made that the home of the prospective guardian meets all relevant health and safety standards.

Procedures for Establishing Guardianship

Citation: Cons. Stat. Tit. 42, § 6351(a)(2.1)

If the child is found to be a dependent child, the court, subject to conditions and limitations as the court prescribes, may transfer permanent legal custody to an individual resident in or outside this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

Contents of a Guardianship Order

Citation: Cons. Stat. Tit. 42, § 6351(a)(2.1)

A court order under this paragraph may set forth the temporary visitation rights of the parents. The court shall refer issues related to support and continuing visitation by the parent to the section of the court of common pleas that regularly determines support and visitation.

Modification/Revocation of Guardianship

Citation: Benchbook § 11.4

The legal custodianship order remains in place until a court terminates it or until the child is adopted, turns 18, or marries. When legal custodianship is set as the permanency plan goal, the court should make every effort to ensure the parties understand that the relationship is to be permanent and that a change in custody will not be made lightly.

Although the legal custodianship is considered permanent, it may be terminated with judicial approval, following the filing of a petition by the agency. (Because the grant of permanent legal custody closes the dependency case, however, this is technically a new proceeding.) The biological parent or the legal custodian also may file motions to have the legal custodianship terminated. Whether the petition is filed by the agency following a determination that the child is in danger, by a parent seeking the return of the child, or by a legal custodian wishing to be relieved of custodial responsibilities, the court must decide whether to continue or revoke the legal custodianship on the basis of the best interests of the child.

Kinship Guardianship Assistance

Citation: Policy Bulletin # 3130-10-02/3140-10-03

The Federal SPLC program provides subsidy support to relative/kinship permanent legal custodians to enable them to provide ongoing adequate and appropriate care for the child. For the child to be eligible for Federal subsidy, the child must:

- Have been eligible for title IV-E foster care maintenance payments for 6 consecutive months while in placement with the relative/kinship caregiver
- Have been in foster care with the relative/kinship caregiver who meets all of the Federal eligibility requirements for at least 6 consecutive months during the current custody episode
- Have a strong bond with the relative/kinship caregiver
- Have been consulted if age 14 or older
- Be a child who is in county custody and who is the sibling of an eligible child and who is placed in the same custodian home

To be eligible for a Federal subsidy, the prospective guardian must:

- Be an approved resource home, having met all of the requirements of Title 55 Pa. Code Chapter 3700 regarding foster family home approval and not be on provisional status
- Have all clearances required for ongoing home approval up to date
- Meet the definition of 'relative/kinship'

If the requirements for a Federal subsidy cannot be met, a State-funded subsidy may be considered. To meet State subsidy guidelines, the child must have lived, or be living, with the identified custodian for a total of 6 months, which need not be consecutive. To be eligible for a State subsidy, the guardian must:

- Meet all of the requirements regarding foster family home approval
- Have all clearances required for ongoing home approval be up to date
- If already an approved resource parent, not be on provisional status

Links to Agency Policies

Pennsylvania Office of Children, Youth and Families Bulletin, [Permanent Legal Custodian Policy](#) (PDF - 212 KB)

Office of Children & Families in the Courts, [Pennsylvania Dependency Benchbook](#), see chapter 11, Permanency Options.

Puerto Rico

Current Through July 2018

Definitions

Note: In the laws of Puerto Rico, the term 'tutorship' means the same as 'guardianship.'

Purpose of Guardianship

Citation: Ann. Laws Tit. 31, §§ 661; 662

The object of tutorship is the custody of the person and property, or of only the property, of such persons who are incapable of governing themselves. Minors not lawfully emancipated may be subject to guardianship.

A Guardian's Rights and Responsibilities

Citation: Ann. Laws Tit. 31, §§ 782; 783; 783a

Children under tutorship owe respect and obedience to their tutor. The tutor may correct them in moderation.

The tutor shall:

- Feed and educate the child, in accordance with his or her condition and in strict conformity with the provisions made by his or her parents, or in defect thereof, with those adopted by the Court of First Instance
- Endeavor, by all the means that the fortune of the child admits, that they acquire or recover their capacity
- Make an inventory of all the real and personal property to which the tutorship extends, within the term fixed for this purpose by the court
- Request, in due time, the judicial authorization for all that is required by this title

The tutor shall administrate the interests of the child as a good head of a family should and is liable for any harm that could result from noncompliance of his or her duties.

Qualifying the Guardian

Citation: Ann. Laws Tit. 31, § 741

Tutorship shall not belong to:

- Those subject to tutorship
- Those who have been convicted of any felony or misdemeanor that implies moral depravation
- Those sentenced to a term of imprisonment, until the sentence expires
- Those legally removed from a former tutorship due to a failure to carry out their obligations or deprived of patria potestas
- Persons of bad conduct or who have no visible means of support
- Bankrupts and insolvents not rehabilitated
- Those who, at the time the tutorship is conferred, have a suit pending with the child or formerly had such suit, regarding such child's civil status
- Those in litigation or who have litigated with the child over the ownership of his or her property, unless the father, or in a proper case, the mother, knowing thereof, shall have, nevertheless, named them tutor in their wills
- Those who owe the child important sums of money, unless, having a knowledge of such debts, the father, or in a proper case, the mother, shall have named them tutor in their wills
- A testamentary tutor who neglects the fulfillment of the requirements indispensable to begin the exercise of their charges
- Persons not residing in Puerto Rico
- Those who have made any vicious and unjustified accusation against the child or criminal charge against his or her ascendants or collaterals up to the fourth degree

Procedures for Establishing Guardianship

Citation: Ann. Laws Tit. 31, §§ 701; 731

In default of a testamentary tutor appointed by either of the parents, the legitimate tutorship of an unemancipated child shall belong to the person the court may designate from among the persons mentioned below, keeping in mind the child's best interests and welfare:

- Any of the grandparents
- Any of the brothers or sisters

When there is no testamentary tutor or a person designated by law for the exercise of the vacant tutorship, or if the person designated does not meet the legal qualifications, the Court of First Instance shall appoint a person of known probity as tutor in all cases involving § 662 of this title.

Contents of a Guardianship Order

This issue is not addressed in the statutes reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Laws Tit. 31, §§ 742; 743; 744; 791

The following shall be removed from guardianship:

- Those who, after such guardianship is submitted, come under any of the cases of disability mentioned in § 741 above
- Those who assume the administration of the guardianship without having given bond
- Those who do not carry out the inventory within the term and in the manner established by law, or do not do it faithfully
- Those who do not behave properly in the discharge of their guardianship
- Those who incur any of the grounds established or any of the circumstances stated in title 31, §§ 634a and 634b (grounds for termination of patria potestas)

The Court of First Instance shall not declare the tutors' incompetence, without summoning and hearing them, if they appear. When the Court of First Instance has declared the incompetence of the tutor, the resolution or order shall be deemed to be final, and steps shall be taken to fill the vacant tutorship, according to the law.

Guardianship ends when the child reaches age 21, is adopted, or is emancipated, with the limitations established by law.

Kinship Guardianship Assistance

This issue is not addressed in the statutes reviewed.

Links to Agency Policies

Agency policies are not available online.

Rhode Island

Current Through July 2018

Definitions

Citation: Admin. Rules 03-240-802, Policy 900.0025

Relative is defined as:

- Grandparent, including step-grandparent, great-grandparent, or adoptive grandparent
- Sibling; including half-brother, half-sister, stepbrother, stepsister, brother-in-law, sister-in-law, adoptive brother, or adoptive sister
- Uncle or aunt of whole- or half-blood, including uncle-in-law, aunt-in-law, great-uncle, or great-aunt
- First and second cousins, including cousin of whole- or half-blood or first and second cousins-in-law
- Stepmother or stepfather
- Nephew or niece, including nephew or niece of whole- or half-blood, nephew-in-law, niece-in-law, great-nephew, or great-niece

Relatives of the putative father will be considered if his name appears on the child's birth certificate, he has admitted paternity in a court of proper jurisdiction, or he has signed an affidavit of paternity.

Spouses of any of the persons listed above continue to meet this relationship requirement even after the marriage is terminated by death or divorce.

Purpose of Guardianship

Citation: Admin. Code 03-007-001, Policy 700.0245

The Department of Children, Youth and Families utilizes a family-driven and youth-guided approach in developing an individualized, culturally sensitive family plan that addresses health, safety, and well-being when making permanency decisions. Federal and State law and department policy recognize legal guardianship as an important permanency option when family reunification, termination of parental rights, or adoption does not meet the child's permanency needs.

Legal guardianship provides the caregiver with the opportunity to provide a safe and stable environment for the child without terminating parental rights and provides a permanency option for older children who do not want to be adopted. Legal guardianship provides the child with a sense of belonging, and placement with members of the family support system maintains consistency in a child's life and helps decrease placement trauma.

Legal guardianship recognizes the tradition in many cultures of caring for related children without changing family relationships.

A Guardian's Rights and Responsibilities

Citation: Admin. Code 03-007-001, Policy 700.0245

Legal guardianship provides the caregiver with the legal authority to make decisions on behalf of the child and the ability to care for the child without child welfare agency intervention.

Qualifying the Guardian

Citation: Admin. Rules 03-240-802, Policy 900.0025

In assessing a kinship care home, issues of child safety and well-being are of utmost importance. Careful and sensitive assessments must be made of kinship care homes with particular attention to the following areas:

- History of involvement with child protective services
- History of criminal charges
- The child's comfort level with the kinship caregiver
- The caregiver's commitment to protecting the child's health and safety and their willingness and ability to protect the child from abuse and neglect, whether by the parents or others
- Whether the relationship between the caregiver and the parent is positive
- The caregiver's willingness to care for the child as long as may be needed
- Whether the kinship caregiver knows the child well and is physically healthy enough to care for the child
- Whether the kinship placement will be able to keep siblings together, or, at the least, allow them regular contact

If the department determines that the relative is a fit and proper person to have placement of the child, taking into account any particular needs of the child and the child's best interests, then the child shall be placed with that relative.

All kinship care placements must be licensed and are subject to criminal records checks, including fingerprinting, and the same licensing standards and foster parent training that apply to a nonrelative foster home. Under certain circumstances, a waiver may be granted for nonsafety-related licensing requirements.

Procedures for Establishing Guardianship

Citation: Admin. Code 03-007-001, Policy 700.0245

The family court may grant a petition for legal guardianship initiated by the department for a child in the department's care. The petition contains the written consent of the parent who previously had custody of the child and the department. The granting of legal guardianship terminates department custody, the involvement of the department with the child, and the department's involvement with the child's parents as it relates to that child.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Admin. Code 03-007-001, Policy 700.0245

The court may revoke a legal guardianship if the court finds after hearing on a motion for revocation that continuation of the legal guardianship is not in the best interests of the child. Notice of any hearing on such motion is provided by the moving party to the department, the court-appointed special advocate, the parent or legal guardian, and any and all other interested parties.

Kinship Guardianship Assistance

Citation: Gen. Laws § 40-11-12.3; Admin. Code 03-007-001, Policy 700.0245

The State may make funds available through the department for special reimbursement to guardians appointed pursuant to this chapter. These funds will be disbursed in accordance with the guidelines to be promulgated by the department.

In regulation: The child is eligible for title IV-E kinship guardianship assistance if:

- The child has been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child, and the child is eligible for title IV-E foster care maintenance payments while residing for at least 6 consecutive months in the home of the prospective legal guardian.
- Being returned home or adopted are not appropriate permanency options for the child.
- The child demonstrates a strong attachment to the prospective legal guardian, and the legal guardian has a strong commitment to caring permanently for the child.
- A child who is age 14 or older has been consulted regarding the legal guardianship arrangement.

The child and any sibling of the child may be placed in the same legal guardianship arrangement if the department and the guardian agree on the appropriateness of the arrangement for the siblings. Kinship guardianship assistance payments may be paid on behalf of each sibling placed with that legal guardian. The sibling does not have to meet the eligibility criteria above to be eligible for assistance.

The department provides kinship guardianship assistance payments on behalf of children to grandparents and other kinship caregivers who assume legal guardianship of children they have cared for as foster parents and have committed to care for permanently. Assistance payments cannot exceed the foster care maintenance payment that would have been paid on behalf of the child as if the child remained in a foster family home.

Links to Agency Policies

Rhode Island Department of Children, Youth and Families, [Policy Manual](#): click on tab for 'Index,' scroll down and select '700.0245' for Legal Guardianship and Kinship Guardianship Assistance or '900.0025' for Kinship Care.

South Carolina

Current Through July 2018

Definitions

Citation: Ann. Code § 63-7-20

'Guardianship of a child' means the duty and authority vested in a person by the family court to make certain decisions regarding a child.

'Legal custody' means the right to the physical custody, care, and control of a child.

Purpose of Guardianship

Citation: Ann. Code § 63-7-1700

The Department of Social Services may recommend legal custody or guardianship if, after assessing the viability of adoption, the department determines that termination of parental rights is not in the child's best interests.

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 63-7-20

The guardian of a child has the duty and authority to make certain decisions regarding a child, including the following:

- Consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment
- Representing a child in legal actions and making other decisions of substantial legal significance affecting a child
- Holding the rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution

The legal custodian has:

- The right to the physical custody, care, and control of a child
- The right to determine where the child shall live
- The right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care

Qualifying the Guardian

Citation: Ann. Code §§ 63-7-1700; 63-7-2320; 63-7-2330; Code of Regs. § 114-550

A home study on the individual whom the department is recommending for custody of the child must be submitted to the court for consideration before custody or legal guardianship, or both, are awarded. The court may order a specified period of supervision and services not to exceed 12 months, and the court may authorize a period of visitation or trial placement prior to receiving a home study.

A person may become a kinship foster parent only upon the completion of a full kinship foster care licensing study performed in accordance with department rules and regulations. Residents of the household who are age 18 or older must undergo the State and Federal fingerprint review procedures as provided for in § 63-7-2340.

Notwithstanding the requirement that a relative licensed as a kinship foster parent must be licensed in accordance with the same requirements as nonrelative applicants, the department may waive, on a case-by-case basis, for relative applicants nonsafety elements as the department deems appropriate. Safety elements, such as criminal and child abuse and neglect background checks required by title IV-E of the Social Security Act, 42 U.S.C. § 671(a)(20)(A), may not be waived.

Procedures for Establishing Guardianship

Citation: Ann. Code § 63-7-1700

If after assessing the viability of adoption the department demonstrates that termination of parental rights is not in the child's best interests, the court may award custody or legal guardianship, or both, to a suitable, fit, and willing relative or nonrelative if the court finds this to be in the best interests of the child.

Contents of a Guardianship Order

Citation: Ann. Code § 63-7-20

The court may, in its order, place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment; the obligation to provide financial support or other funds for the care of the child; and other residual rights or obligations as may be provided by order of the court.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

This issue is not addressed in the statutes and regulations reviewed.

Links to Agency Policies

South Carolina Department of Social Services, *Human Services Policy and Procedures Manual*:

- [Chapter 5, Foster Care & Permanency Planning](#) (PDF - 1,322 KB): see § 520.3, Court-Ordered Custody and/or Guardianship
- [Chapter 7, Foster Family Licensing & Support](#) (PDF - 1,200 KB): see § 741.1, Licensure of Kinship Foster Families

South Dakota

Current Through July 2018

Definitions

Citation: Ann. Stat. §§ 29A-1-201; 26-7A-19

The term 'guardian' means a person appointed by a court to be responsible for the personal affairs of a minor or protected person but excludes one who is merely a guardian ad litem.

The term 'relative' means an adult who is related to the child by blood, adoption, or marriage and who is the child's grandparent, aunt, uncle, sibling, brother-in-law, sister-in-law, niece, nephew, great-grandparent, great-uncle, great-aunt, first cousin, second cousin, stepparent, or stepsibling.

The term 'custodian' means an adult who is the biological parent, adoptive parent, or guardian of the child's sibling or half-sibling.

Purpose of Guardianship

Citation: DSS Handbook

Situations may occur where a child is unable to return home and plans are developed for a family or individual to become the child's legal guardian.

A Guardian's Rights and Responsibilities

This issue is not addressed in the statutes and regulations reviewed.

Qualifying the Guardian

Citation: DSS Handbook

Legal guardians can be relatives, foster care providers, or other adults who have a connection to or significant relationship with a child who are willing to accept legal responsibility.

Procedures for Establishing Guardianship

Citation: Ann. Stat. §§ 26-7A-19.2; 29A-5-203; 26-8A-21.2

If a family service specialist employed by the Division of Child Protection Services within the department is contacted by a relative about the relative's desire to take temporary or permanent placement of an alleged or adjudicated abused or neglected child who has been removed from the child's parent, guardian, or custodian, the division shall document the contact in the child's file. The division shall send information to the relative within 5 business days informing the relative of the steps required in order for the relative to be considered for placement.

A petition for the appointment of a guardian may be filed by the minor, by an interested relative, by the individual or facility that is responsible for or has assumed responsibility for the minor's care or custody, by the individual or entity that the minor has nominated as guardian, or by any other interested person, including the Department of Human Services or the Department of Social Services (DSS).

At the permanency hearing, the court may determine that the child should be referred for legal guardianship or be placed permanently with a fit and willing relative.

Contents of a Guardianship Order

Citation: DSS Handbook

When a legal guardianship occurs, the court grants custody of the child to the guardian and DSS is no longer involved.

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 26-7A-101

Guardianship or conservatorship of a child under this chapter or chapter 26-8A, 26-8B, or 26-8C shall continue until the court orders otherwise but not after the child has attained the age of majority. The child or any person interested in the child may from time to time, upon a proper showing, apply to the court for the appointment of a new guardian or conservator; for the restoration of the child to the custody of the child's parents, if parental rights have not been terminated, or the child's former guardian or custodian; or for the discharge of the guardian or conservator appointed by the court at the final disposition of the child.

Kinship Guardianship Assistance

Citation: DSS Handbook

When a family or individual is granted guardianship of a child who was in the custody of DSS, a subsidy to care for the child may be available.

Links to Agency Policies

South Dakota Department of Social Services, [DSS Handbook](#) (PDF - 3,375 KB)

Tennessee

Current Through July 2018

Definitions

Citation: Ann. Code §§ 34-1-101; 37-1-102; Pol. & Proc. Man. § 15.15

The term 'guardian' or 'coguardian' means a person or persons appointed by the court to provide partial or full supervision, protection, and assistance of the person or property, or both, of a minor.

A 'custodian' is a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom temporary legal custody of the child has been given by order of a court.

The term 'custody' means control of the actual physical care of the child and includes the right and responsibility to provide for the physical, mental, moral, and emotional well-being of the child. 'Custody,' as herein defined, relates to those rights and responsibilities as exercised either by the parents or by a person or organization granted custody by a court of competent jurisdiction. 'Custody' shall not be construed as the termination of parental rights and does not exist by virtue of mere physical possession of the child.

In policy: For purposes of the subsidized guardianship program, the legal guardian of a child is a person to whom the child is related to by blood, marriage, or adoption or with whom the child had a significant relationship that pre-existed placement, such as a godparent, friend, neighbor, church member, or teacher.

Purpose of Guardianship

Citation: Ann. Code § 37-1-802

The court may issue a permanent guardianship order only if the court finds that:

- The child has been previously adjudicated dependent and neglected.
- The child has been living with the proposed permanent guardian for at least 6 months.
- The permanent guardianship is in the child's best interests.
- Reunification of the parent and child is not in the child's best interests.

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 37-1-804

The permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

- To protect, nurture, discipline, and educate the child
- To provide food, clothing, shelter, and education, as required by law, and necessary health care, including medical, dental, and mental health, for the child

- To consent to health care, without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons, unless a parent would have been liable in the circumstances
- To authorize a release of health care and educational information
- To authorize a release of information when consent of a parent is required by law, regulation, or policy
- To consent to social and school activities of the child
- To consent to military enlistment or marriage
- To obtain representation for the child in legal actions
- To determine the nature and extent of the child's contact with other persons
- To make decisions regarding travel
- To manage the child's income and assets

The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

Qualifying the Guardian

Citation: Ann. Code § 37-1-802

The court may consider any adult, including a relative, foster parent, or another adult with a significant relationship with the child as a permanent guardian. If the child is in the custody of the Department of Children's Services, the court shall seek the department's opinion on both the proposed permanent guardianship and the proposed permanent guardian. An agency or institution may not be a permanent guardian.

The court may issue a permanent guardianship order only if the court finds that the proposed permanent guardian:

- Is emotionally, mentally, physically, and financially suitable to become the permanent guardian
- Is suitable and able to provide a safe and permanent home for the child
- Has expressly committed to remain the permanent guardian for the duration of the child's minority
- Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian, including an understanding of any potential resulting loss of State or Federal benefits or other assistance
- Will comply with all terms of any court order to provide the child's parent with visitation, contact, or information

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 37-1-801; 37-1-802

The juvenile courts of Tennessee are empowered to appoint an individual as permanent guardian, provided that the individual qualifies under the provisions of this part. The court may establish a permanent guardianship at a permanency-planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding or a delinquency proceeding.

If the child is age 12 or older, the court shall consider the reasonable preference of the child. The court may hear the preference of a younger child. The preferences of older children should normally be given greater weight than those of younger children.

The parent may voluntarily consent to the permanent guardianship and shall demonstrate an understanding of the implications and obligations of such consent prior to the court entering an order establishing a permanent guardianship in accordance with the provisions of this part.

In determining whether it is in the child's best interests that a permanent guardian be designated, in addition to any other evidence the court finds relevant, the court shall consider each of the following factors:

- The child's need for continuity of care and caregivers and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages
- The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child
- The quality of the interaction and interrelationship of the child with the child's parent, siblings, relatives, and caregivers, including the proposed permanent guardian

Contents of a Guardianship Order

Citation: Ann. Code §§ 37-1-803; 37-1-805

Entry of a permanent guardianship order does not terminate the parent and child relationship, including:

- The right of the child to inherit from the child's parents
- The parents' right to visit or contact the child, as defined by the court
- The parents' right to consent to the child's adoption
- The parents' responsibility to provide financial, medical, and other support for the child

The permanent guardianship order shall specify the frequency and nature of visitation or contact or the sharing of information with parents and the child. The court shall issue an order regarding visitation, contact, and the sharing of information based on the best interests of the child. The order may restrict or prohibit visitation, contact, and the sharing of information. The order may incorporate an agreement reached among the parties.

The court shall retain jurisdiction to enforce, modify, or terminate a permanent guardianship order until the child reaches age 18, or age 19 for children adjudicated delinquent.

Modification/Revocation of Guardianship

Citation: Ann. Code § 37-1-806

A modification or termination of the permanent guardianship may be requested by the permanent guardian, by the child if the child is age 16 or older, by the parent, or by the State. When the permanent guardianship is terminated by a court order, the court shall make further provisions for the permanent guardianship or custody of the child, based upon the best interests of the child.

An order for modification or termination of the permanent guardianship shall be based on a finding, by a preponderance of evidence, that there has been a substantial change in material circumstances. In making this determination, the court may consider whether the child's parent is currently able and willing to care for the child or that the permanent guardian is unable to continue to care for the child.

In determining whether it is in the child's best interests that the permanent guardianship be modified or terminated, the court shall consider the following factors:

- The child's need for continuity of care and caregivers
- The physical, mental, and emotional health of all individuals involved, especially the physical, mental, and emotional needs of the child
- The quality of the interaction and interrelationship of the child with the child's parent, siblings, relatives, and caregivers, including the proposed permanent guardian

In the event that it is necessary to appoint a successor permanent guardian, appropriate parties may be considered by the court, with the parent having no greater priority than a third party. The court may also consider, where appropriate, return of custody to the parent.

Kinship Guardianship Assistance

Citation: Pol. & Proc. Man. § 15.15

For a child to be eligible for the subsidized permanent guardianship (SPG) program, the child must meet all of the following criteria:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare and best interests of the child.
- The child has resided with a licensed or approved kinship foster parent for at least 6 consecutive months.
- The child should have a goal of permanent guardianship where reunification and adoption have been deemed inappropriate.
- The child demonstrates a strong attachment to the prospective relative guardian and the prospective relative guardian demonstrates a strong commitment to caring for the child on a permanent basis.
- A child who is age 12 or older must be consulted regarding the SPG arrangement.

Note: A 'strong attachment' is defined as a relationship that existed between the potential guardian and the child or family prior to placement.

Children are eligible for the SPG program until they reach age 18. Children may receive guardianship assistance payments until they are age 21, if specific conditions are met.

If a child is eligible for title IV-E-funded guardianship assistance but has a sibling who is not eligible, the child and any of the child's siblings may be placed in the same relative guardianship arrangement if the department and the relative agree that the arrangement is appropriate for the sibling. Title IV-E-funded relative guardianship assistance may be paid on behalf of each sibling.

Links to Agency Policies

Tennessee Department of Children's Services:

- Administrative Policies and Procedures, § 15.15, [Subsidized Permanent Guardianship](#) (PDF - 441 KB)
- [Protocol for Court Exit of Child to Permanent Guardianship](#) (PDF - 227 KB)
- [Subsidy Manual for Adoption Assistance and Subsidized Permanent Guardianship](#) (PDF - 1,250 KB)

Texas

Current Through July 2018

Definitions

Citation: Fam. Code § 264.851; Admin. Code Tit. 40, § 700.1027

'Kinship provider' means a relative of a foster child, or another adult with a longstanding and significant relationship with a foster child before the child was placed with the person by the Department of Family and Protective Services, and with whom the child resides for at least 6 consecutive months after the person becomes licensed by the department or verified by a licensed child-placing agency or the department to provide foster care.

The term 'relative' means a person related to a foster child by consanguinity or affinity.

In regulation: A 'permanent kinship conservator' is a relative or other individual with a prior longstanding and significant relationship to a child who was in the temporary or permanent managing conservatorship of the department immediately prior to permanent managing conservatorship being granted to that person. The term does not include a parent of the child or other person from whom the child was legally removed by the department.

A 'prospective permanent kinship conservator' is a relative or other individual with a prior longstanding and significant relationship to a child who was in the temporary or permanent managing conservatorship of the department who has demonstrated a strong commitment to caring permanently for the child and who applies for or has entered into a permanency care assistance agreement with the department but has not yet been granted permanent managing conservatorship of the child.

Purpose of Guardianship

Citation: Fam. Code § 264.752

The department shall develop a program to promote continuity and stability for children for whom the department is appointed managing conservator by placing those children with relative or other designated caregivers.

A Guardian's Rights and Responsibilities

Citation: Fam. Code § 153.371

Unless limited by court order or other provisions of this chapter, a nonparent appointed as a managing conservator of the child has the following rights and duties:

- The right to have physical possession and to direct the moral and religious training of the child
- The duty of care, control, protection, and reasonable discipline of the child
- The duty to provide the child with clothing, food, shelter, and education and medical, psychological, and dental care
- The right to consent for the child to medical, psychiatric, psychological, dental, and surgical treatment and to have access to the child's medical records
- The right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child
- The right to the services and earnings of the child

- The right to consent to marriage and to enlistment in the armed forces of the United States
- The right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child
- The right to act as an agent of the child in relation to the child's estate if the child's action is required by a State, the United States, or a foreign government, except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child
- The right to designate the primary residence of the child and to make decisions regarding the child's education
- If the parent-child relationship has been terminated with respect to the parents or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make

Qualifying the Guardian

Citation: Fam. Code §§ 264.753; 264.754; 264.7541; 264.8521

The department shall expedite the completion of the background and criminal history check, the home study, and any other administrative procedure to ensure that the child is placed with a qualified relative or caregiver as soon as possible after the date the caregiver is identified.

Before placing a child with a proposed relative or other designated caregiver, the department must conduct an assessment to determine whether the proposed placement is in the child's best interests.

Except as provided below, before placing a child with a proposed relative or other designated caregiver, the department must:

- Arrange a visit between the child and the proposed caregiver
- Provide the proposed caregiver with a form containing information, to the extent it is available, about the child that would enhance continuity of care for the child, including:
 - » The child's school information and educational needs
 - » The child's medical, dental, and mental health care information
 - » The child's social and family information
 - » Any other information about the child the department determines will assist the proposed caregiver in meeting the child's needs

The department may waive the requirements above if the proposed relative or other designated caregiver has a long-standing or significant relationship with the child and has provided care for the child at any time during the 12 months preceding the date of the proposed placement.

At the time a person applies to become verified to provide foster care in order to qualify for the permanency care assistance program, the department shall:

- Notify the applicant that a background check, including a criminal history record check, will be conducted on the individual
- Inform the applicant about criminal convictions that preclude an individual from becoming a verified agency foster home and also may be considered in evaluating the individual's application

Procedures for Establishing Guardianship

Citation: Fam. Code § 264.751

A designated caregiver is an individual who has a longstanding and significant relationship with a child for whom the department has been appointed managing conservator and who:

- Is appointed to provide substitute care for the child but is not verified by a licensed child-placing agency to operate an agency foster home
- Is subsequently appointed permanent managing conservator of the child after providing the care described above

A relative caregiver is a relative who:

- Provides substitute care for a child for whom the department has been appointed managing conservator but who is not verified by a licensed child-placing agency to operate an agency foster home
- Is subsequently appointed permanent managing conservator of the child after providing the care described above

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Fam. Code § 156.101

The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child, if modification would be in the best interests of the child and:

- The circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed.
- The child is at least age 12 and has expressed to the court in chambers the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child.
- The conservator, who has the exclusive right to designate the primary residence of the child, has voluntarily relinquished the primary care and possession of the child to another person for at least 6 months.

The above subsection does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty.

Kinship Guardianship Assistance

Citation: Fam. Code §§ 264.852; 264.853; 264.854; 264.855

The department may enter into a permanency care assistance agreement with a kinship provider who is the prospective managing conservator of a foster child only if the kinship provider meets the eligibility criteria under Federal and State law and department rule. The agreement may provide for reimbursement of the nonrecurring expenses a kinship provider incurs in obtaining permanent managing conservatorship of a foster child, including attorney's fees and court costs.

The executive commissioner shall adopt rules necessary to implement the permanency care assistance program. The rules must do both of the following:

- Establish eligibility requirements to receive permanency care assistance benefits
- Ensure that the program conforms to the requirements for Federal assistance, as required by the Fostering Connections to Success and Increasing Adoptions Act of 2008

The executive commissioner shall set the maximum monthly amount of assistance under a permanency care assistance agreement in an amount that does not exceed the monthly foster care maintenance payment the department would pay to a foster care provider caring for the child.

If the department first entered into a permanency care assistance agreement with a kinship provider after the child's 16th birthday, the department may continue to provide permanency care assistance payments until the last day of the month of the child's 21st birthday, provided the child is:

- Regularly attending high school or enrolled in a program leading toward a high school diploma or high school equivalency certificate
- Regularly attending an institution of higher education or a postsecondary vocational or technical program
- Participating in a program or activity that promotes or removes barriers to employment
- Employed for at least 80 hours a month
- Incapable of any of the activities described above due to a documented medical condition

Links to Agency Policies

Texas Department of Family and Protective Services:

- Child Protective Services Handbook, [§ 1600, Permanency Care Assistance](#)
- [Services to Kinship Caregivers Resource Guide](#) (PDF - 737 KB)

Utah

Current Through July 2018

Definitions

Citation: Ann. Code § 75-1-201

The term 'guardian' means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument, but excludes one who is merely a guardian ad litem.

Purpose of Guardianship

Citation: Admin. Code R512-308-1; R512-308-3

Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of the Division of Child and Family Services or the Department of Human Services when it is not appropriate for the child to return home, adoption has been ruled out as a permanency goal, and continuing agency custody is not in the child's best interests.

General qualifying factors that must be met for both relative and nonrelative guardianship include the following:

- The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and that adoption is not an appropriate plan for the child.
- The parent and child have a significant bond, but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.
- The prospective guardian must:
 - » Be able to maintain a stable relationship with the child
 - » Have a strong commitment to providing a safe and stable home for the child on a long-term basis
 - » Have a means of financial support and connections to community resources
 - » Be able to care for the child without division supervision
- The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.
- There are compelling reasons why the child cannot be adopted, such as when the child's Tribe has exclusive jurisdiction or the Tribe has chosen to intervene in the adoption proceedings.

Under the Indian Child Welfare Act (25 USC § 1911), a Tribe has the right to determine the child's permanency. For this reason, the Tribe has the authority to approve guardianship with the current caregiver.

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 78A-6-105

Guardianship of the person includes the authority to consent to the following:

- Marriage
- Enlistment in the armed forces
- Major medical, surgical, or psychiatric treatment
- Legal custody, if legal custody is not vested in another person, agency, or institution

'Legal custody' means a relationship embodying the following rights and duties:

- The right to physical custody of the minor
- The right and duty to protect, train, and discipline the minor
- The duty to provide the minor with food, clothing, shelter, education, and ordinary medical care
- The right to determine where and with whom the minor shall live
- The right, in an emergency, to authorize surgery or other extraordinary care

The term 'residual parental rights and duties' means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the following:

- The responsibility for support
- The right to consent to adoption

- The right to determine the child's religious affiliation
- The right to reasonable parent-time unless restricted by the court

If no guardian has been appointed, 'residual parental rights and duties' also include the right to consent to marriage; enlistment; and major medical, surgical, or psychiatric treatment.

Qualifying the Guardian

Citation: Admin. Code R512-308-4; R512-308-5

For a nonrelative guardianship, the following factors must be met:

- The prospective guardian is a licensed out-of-home care provider.
- The child has lived for at least 6 months in the home of the prospective guardian. This requirement may be waived for sibling groups if at least one sibling has been in the home for 6 months and meets all other eligibility criteria.
- The division has reviewed the home study and assessed the placement and found that continuation with the caregiver is in the child's best interests and supports the child's safety, permanency, and well-being.
- The division has no concerns with the care the child has received in the home.
- The child has a stable and positive relationship with the caregiver.

In addition to qualifying factors listed above, all of the following factors apply for relatives seeking legal guardianship:

- The child's prospective guardian is a relative to the child, including the following:
 - » Grandparents, brothers, sisters, stepbrothers, stepsisters, aunts, uncles, first cousins, first cousins once removed, nephews, and nieces
 - » People of prior generations as designated by the prefixes grand, great, great-great, or great-great-great
 - » Brothers and sisters by legal adoption
 - » The spouse or former spouse of any person listed above
 - » Individuals who can prove they meet one of the above-mentioned relationships via a blood relationship even though the legal relationship has been terminated
 - » Former stepparents
 - » A Native American adult who has a Native American child placed in or living in that adult's home, and both the child and the adult are members of, or eligible for membership in, a federally recognized Tribe
 - » An adult of the same ethnicity, culture, country of origin, religion, language, and/or nationality as the refugee/asylee child in his or her care
- The child's needs may be met without continued division funding.

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 75-5-201; 75-5-206; 75-5-208

A person becomes a guardian of a minor upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

The court may appoint as guardian any person whose appointment would be in the best interests of the minor. In determining the minor's best interests, the court may consider the minor's physical, mental, moral, and emotional health needs. The court shall appoint a person nominated by the minor, if the minor is age 14 or older, unless the court finds the appointment contrary to the best interests of the minor.

By accepting a court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be initiated by any person interested in the welfare of the minor.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Code §§ 75-5-210; 75-5-212

A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, adoption, marriage, or attainment of majority, but termination does not affect the guardian's liability for prior acts nor his or her obligation to account for funds and assets of the ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court.

Any person interested in the welfare of a ward, or the ward, if age 14 or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for the appointment of a successor guardian.

After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

Kinship Guardianship Assistance

Citation: Admin. Code R512-308-6; R512-308-7

In order to be considered for a guardianship subsidy, the prospective relative guardian must be a licensed out-of-home care provider and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of Workforce Services, as outlined in R986-200-214.

Guardianship subsidies are available to meet the needs for children in out-of-home care:

- For whom guardianship has been determined as the most appropriate primary goal
- Who do not otherwise have adequate resources available for his or her care and maintenance
- Who meet the qualifying factors described the sections above

The request for the guardianship subsidy shall be reviewed by the regional guardianship screening committee, which shall determine if the request is approved or denied. A prospective guardian shall not receive both the Specified Relative Grant and the guardianship subsidy.

Guardianship subsidies are available through the month in which the child reaches age 18. Each region may establish a limit to the number of eligible children who may receive guardianship subsidies. Guardianship subsidies are subject to the availability of State funds designated for this purpose.

The regional guardianship subsidy screening committee is responsible for the following:

- Verifying that a child qualifies for a guardianship subsidy
- Approving the level of need and amount of monthly subsidy for initial requests, changes, and renewals
- Documenting the committee's decisions
- Informing guardians of available supportive services to prevent disruptions and preserve permanency

Links to Agency Policies

Utah Division of Child and Family Services, [Out-of-Home Care Guidelines](#) (PDF - 1,456 KB), see §§ 308.2 and 308.2a.

Utah Administrative Code:

- [Rule R512-308. Out-of-Home Services, Guardianship Services and Placements](#)
- [Rule R512-500. Kinship Services, Placement and Background Screening](#)

Vermont

Current Through July 2018

Definitions

Citation: Ann. Stat. Tit. 14, § 2661

The term 'permanent guardian' means one or two adults appointed by the court to act as a parent for a child during the child's minority. 'Permanent guardianship' means a legal guardianship of a minor that is intended to continue with the same guardian, based on the guardian's express commitment, for the duration of the child's minority.

The term 'relative' means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew of a person, whether related to the person by the whole or the half blood, affinity, or adoption. The term does not include a person's stepparent.

Purpose of Guardianship

Citation: Ann. Stat. Tit. 14, § 2664

An order for permanent guardianship may be issued when the court finds, by clear and convincing evidence, that neither parent is able to assume or resume parental duties within a reasonable time.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. Tit. 14, §§ 2662; 2663

A permanent guardian shall have parental rights and responsibilities for the child that include the following:

- Providing the child with:
 - » A healthy and safe living environment and daily care
 - » Education
 - » Necessary and appropriate health care, including medical, dental, and mental health care
- Making decisions regarding:
 - » Travel
 - » Management of the child's income and assets
 - » The child's right to marry or enlist in the armed forces
 - » Representation of the child in legal actions
 - » Any other matter that involves the child's welfare and upbringing

The permanent guardian shall:

- Before appointment, expressly commit to remain the permanent guardian and assume the parental rights and responsibilities for the child for the duration of the child's minority
- Be responsible to the court and the child for the health, education, and welfare of the minor
- Comply with all terms of any court order to provide the child's parent with visitation, contact, or information

While a permanent guardianship is in effect, the parent shall have the following rights:

- Visitation, contact, and information to the extent delineated in the order issued by the family division of the superior court
- Inheritance by and from the child
- Right to consent to adoption of the child

After the court has issued a final order establishing permanent guardianship, the parent shall have no right to seek termination of the guardianship order. The parent may seek only enforcement or modification of an order of visitation, contact, or information.

Qualifying the Guardian

Citation: Ann. Stat. Tit. 14, § 2664(a)(4)

The court shall determine whether the proposed permanent guardian:

- Is emotionally, mentally, and physically suitable to become the permanent guardian
- Is financially suitable, with kinship guardianship assistance provided for in title 33, § 4903 if applicable, to become the permanent guardian
- Has expressly committed to remain the permanent guardian for the duration of the child's minority
- Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian, including an understanding of any resulting loss of State or Federal benefits or other assistance

Procedures for Establishing Guardianship

Citation: Ann. Stat. Tit. 14, § 2664

The family division of the superior court may establish a permanent guardianship at a permanency-planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding or a delinquency proceeding. The court also shall issue an order permitting or denying visitation, contact, or information with the parent at the same

time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

- Neither parent is able to assume or resume parental duties within a reasonable time.
- The child has resided with the permanent guardian for at least 6 months.
- A permanent guardianship is in the best interests of the child.

The parent may voluntarily consent to the permanent guardianship and shall demonstrate an understanding of the implications and obligations of the consent.

The court may name a successor permanent guardian in the initial permanent guardianship order. Prior to issuing an order naming a successor permanent guardian, the court shall find by clear and convincing evidence that the named successor permanent guardian meets the criteria listed in § 2664(a)(4) above.

Contents of a Guardianship Order

Citation: Ann. Stat. Tit. 14, §§ 2663; 2664; 2667

The family division of the superior court shall issue an order regarding visitation, contact, and information based on the best interests of the child. The order may prohibit visitation, contact, and information. The order may incorporate an agreement reached among the parties.

After the family division of the superior court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate probate division of the superior court in the district in which the permanent guardian resides. Jurisdiction shall continue to lie in the probate division. Appeal of any decision by the probate division of the superior court shall be de novo to the family division.

The probate division of the superior court shall have exclusive jurisdiction to hear any action to enforce, modify, or terminate the initial order issued by the family division of the superior court for visitation, contact, or information. Upon a showing by affidavit of immediate harm to the child, the probate division of the superior court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and assign parental rights and responsibilities to the Commissioner for Children and Families.

A breach by the permanent guardian of an order for visitation, contact, or information shall not be grounds for voiding or terminating the permanent guardianship. However, the court may enforce the order with all the powers and remedies of the court, including contempt.

A modification of an order of visitation or contact shall be based upon a finding by a preponderance of the evidence that there has been a substantial change in the material circumstances and that the proposed modification is in the best interests of the child.

Modification/Revocation of Guardianship

Citation: Ann. Stat. Tit. 14, § 2666

A modification or termination of the permanent guardianship may be requested by the permanent guardian, the child if the child is age 14 or older, or the commissioner. A modification or termination may also be ordered by the probate division of the superior court on its own initiative. When the permanent guardianship is terminated by the probate division of the superior court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent but to the commissioner as if the child had been abandoned. If a successor permanent guardian has been named in the initial permanent guardianship order, custody shall transfer to the successor guardian, without reverting first to the commissioner.

An order for modification or termination of the permanent guardianship shall be based on a finding by a preponderance of the evidence that there has been a substantial change in material circumstances, or that one or more findings required by subsection 2664(a) of this title no longer can be supported by the evidence, and that the proposed modification or termination is in the best interests of the child. The burden of proof shall be on the party seeking the modification or termination.

In the event that it is necessary to appoint a successor permanent guardian, the parent may be considered with no greater priority than a third party.

Kinship Guardianship Assistance

Citation: Ann. Stat. Tit. 14, § 2663; Tit. 33, § 4903

The parent shall have the primary responsibility to support the child. In the event the income and assets of the parent qualify the child for governmental benefits, the benefits may be conferred upon the child with payment to be made to the permanent guardian. The provision of necessities by the permanent guardian shall not disqualify the child for any benefit or entitlement.

If the child has been in the custody of the commissioner immediately prior to the creation of the guardianship, the commissioner shall have no further duty of support or care for the child after the establishment of the permanent guardianship unless the family is eligible for kinship guardianship assistance or the commissioner contractually agrees in writing to that support.

The Department for Children and Families may expend, within amounts available for the purposes, what is necessary to protect and promote the welfare of children and adults in this State, including the strengthening of their homes whenever possible, by providing aid to a child in the permanent guardianship of a relative if the child was in the care and custody of the department and was placed in the home of the relative for at least 6 months prior to the creation of the guardianship.

Links to Agency Policies

Vermont Department for Children and Families:

- Family Services Policy Manual, [Guardianship Assistance Program](#) (PDF - 80 KB)
- [Kinship Caregivers Guide](#) (PDF - 1,250 KB)

Virgin Islands

Current Through July 2018

Definitions

Citation: Ann. Code Tit. 15, § 5-102

A 'guardian' is a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse or by the court. The term includes a limited, emergency, and temporary substitute guardian but not a guardian ad litem.

Purpose of Guardianship

Citation: Ann. Code Tit. 15, § 5-204

The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interests and the parents consent, all parental rights have been terminated, or the parents are unwilling or unable to exercise their parental rights.

A Guardian's Rights and Responsibilities

Citation: Ann. Code Tit. 15, § 5-208

Except as otherwise limited by the court, a guardian of a minor ward has the powers of a parent regarding the ward's support, care, education, health, and welfare. A guardian may do the following:

- Apply for and receive money for the support of the ward otherwise payable to the ward's parent, guardian, or custodian under the terms of any statutory system of benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship
- If otherwise consistent with the terms of any order by a court of competent jurisdiction relating to custody of the ward, take custody of the ward and establish the ward's place of custodial dwelling
- Unless a conservator for the estate of a ward has been appointed, take appropriate action to compel a person to support the ward or to pay money for the benefit of the ward
- Consent to medical or other care, treatment, or service for the ward
- Consent to the marriage of the ward

The court may specifically authorize the guardian to consent to the adoption of the ward.

Qualifying the Guardian

Citation: Ann Code Tit. 15, § 5-206

The court shall appoint as guardian a person whose appointment will be in the best interests of the minor. The court shall appoint a person nominated by the minor if the minor has reached age 14, unless the court finds the appointment will be contrary to the best interests of the minor.

Procedures for Establishing Guardianship

Citation: Ann. Code Tit. 15, §§ 5-204; 5-205

A minor or a person interested in the welfare of a minor may petition for appointment of a guardian. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to the following:

- The minor, if the minor is age 14 or older and is not the petitioner
- Any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition
- Each living parent of the minor or, if there is none, the adult nearest in kinship that can be found
- Any person nominated as guardian by the minor if the minor is at least age 14
- Any appointee of a parent whose appointment has not been prevented or terminated under § 5-203
- Any guardian or conservator currently acting for the minor in the Virgin Islands or elsewhere

At the hearing, the court shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of § 5-204(b) have been met, and the best interests of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interests of the minor.

If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor is at least age 14.

Contents of a Guardianship Order

This issue is not addressed in the statutes reviewed.

Modification/Revocation of Guardianship

Citation: Ann. Code Tit. 15, § 5-210

A guardianship of a minor terminates upon the minor's death, adoption, emancipation, or attainment of majority or as ordered by the court.

Kinship Guardianship Assistance

This issue is not addressed in the statutes reviewed.

Links to Agency Policies

Kinship guardianship is not addressed in available agency policies.

Virginia

Current Through July 2018

Definitions

Citation: Ann. Code §§ 16.1-228; 63.2-100

'Permanent foster care placement' means the place of residence in which a child resides and in which he or she has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he or she reaches the age of majority, unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

A 'kinship guardian' is the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the child's foster parent.

The term 'kinship guardianship' means a relationship established in accordance with § 63.2-1305 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining, as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision-making for the child.

The 'Kinship Guardianship Assistance Program' is a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

Purpose of Guardianship

Citation: Ann. Code §§ 63.2-900.1; 63.2-908; 63.2-1305

When a child has been removed from his or her home, the local board shall, in accordance with regulations adopted by the State Board of Social Services, determine whether the child has a relative who is eligible to become a kinship foster parent.

A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his or her natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

The Kinship Guardianship Assistance Program is established to facilitate placements with relatives and ensure permanency for children for whom neither adoption nor being returned home is an appropriate permanency option.

A Guardian's Rights and Responsibilities

Citation: Ann. Code § 63.2-908

Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage, application for a motor vehicle and driver's license, application for admission into college, and any other such activities that require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.

Qualifying the Guardian

Citation: Ann. Code §§ 63.2-900.1; 16.1-278.2; 16.1-278.3

Kinship foster care placements shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement. Subject to approval by the Commissioner of Social Services, a local board may grant a waiver of the board's standards for foster home approval, set forth in regulations, that are not related to safety. Waivers granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed. Upon request by a local board, the commissioner shall review the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval standard being waived is not related to safety.

Any order transferring custody of the child to a relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state.

Procedures for Establishing Guardianship

Citation: Ann. Code §§ 16.1-278.2; 16.1-278.3; 63.2-908

The court shall hold a dispositional hearing within 60 days of an order removing a child from his or her home. If at the hearing the child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his or her care; or (c) abandoned by his or her parent or other custodian, or without parental care and guardianship because of his or her parent's absence or physical or mental incapacity, the court may order a transfer of legal custody to a relative or other interested individual.

Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody or guardianship to a relative or other interested individual.

A local department or a licensed child-placing agency shall have authority pursuant to a court order to place a child who is age 16 or older over whom it has legal custody in a permanent foster care placement in which the child shall remain until attaining majority or thereafter, until age 21, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment, or training program approved pursuant to regulations of the board.

Contents of a Guardianship Order

Citation: Ann. Code §§ 16.1-278.2; 16.1-278.3; 63.2-908

The court's order transferring custody to a relative or other interested individual should provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare, ongoing provision of social services to the child and the child's custodian, and court review of the child's placement.

When a child has been placed in a permanent foster care placement, and if the child has a continuing involvement with his or her natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.

Modification/Revocation of Guardianship

Citation: Ann. Code §§ 63.2-900.1; 63.2-908

A child placed in kinship foster care shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for 6 consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal, (ii) removal is agreed upon at a family partnership meeting as defined by the Department of Social Services, (iii) removal is ordered by a court of competent jurisdiction, or (iv) removal is warranted pursuant to § 63.2-1517.

No child shall be removed from the physical custody of the foster parents in the permanent care placement except upon order of the court or pursuant to § 16.1-251 or 63.2-1517. The department or agency so placing a child shall retain legal custody of the child.

Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court that ordered the placement pursuant to a petition filed by the foster parents, local department, licensed child-placing agency, or other appropriate party.

Kinship Guardianship Assistance

Citation: Ann. Code § 63.2-1305

A child is eligible for kinship guardianship assistance program if:

- The child has been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.
- The child was eligible for title IV-E or State foster care maintenance payments while residing for at least 6 consecutive months in the prospective kinship guardian's home.
- Being returned home or adopted is not an appropriate permanency option for the child.
- The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child.
- If the child is age 14 or older, the child has been consulted regarding the kinship guardianship.

If a child does not meet the above criteria but has a sibling who does meet the criteria, the child may be placed in the same kinship guardianship with his or her eligible sibling, if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each sibling.

In order to receive payments, the local department and the prospective kinship guardian shall enter into a written kinship guardianship assistance agreement that includes the following:

- The amount of the assistance payment and the manner in which the payment may be adjusted periodically, on the basis of the circumstances of the kinship guardian and the needs of the child
- The additional services or assistance, if any, for which the child and kinship guardian will be eligible

- The procedure by which the kinship guardian may apply for additional services, as needed
- Assurance that the local department shall pay up to \$2,000 of the total cost of nonrecurring expenses associated with obtaining kinship guardianship of the child

Links to Agency Policies

Virginia Department of Social Services, *Child and Family Services Manual*, section E(10), [Achieving Permanency Goal: Custody Transfer to Relatives](#) (PDF - 437 KB)

Washington

Current Through July 2018

Definitions

Citation: Rev. Code § 13.36.020

'Guardian' means a person who has been appointed by the court as the guardian of a child in a legal proceeding under this chapter and has the legal right to custody of the child pursuant to court order. The term 'guardian' does not include a 'dependency guardian' appointed pursuant to a proceeding under chapter 13.34 for the purpose of assisting the court in supervising the dependency.

'Relative' means a person related to the child in the following ways:

- Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great
- Stepfather, stepmother, stepbrother, and stepsister
- A person who legally adopts a child or the child's parent, as well as the natural and other legally adopted children of such persons and other relatives of the adoptive parents in accordance with State law
- Spouses of any persons named above, even after the marriage is terminated
- Relatives, as named above, of any half-sibling of the child
- Extended family members, as defined by the law or custom of the Indian child's Tribe or, in the absence of such law or custom, a person who has reached age 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a 24-hour basis to an Indian child, as defined in 25 U.S.C. § 1903(4)

'Suitable person' means a nonrelative with whom the child or the child's family has a preexisting relationship, who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child, and with whom the child has been placed pursuant to § 13.34.130.

Purpose of Guardianship

Citation: Rev. Code §§ 13.36.010; 13.36.030

The legislature finds that a guardianship is an appropriate permanent plan for a child who has been found to be dependent under chapter 13.34 and who cannot safely be reunified with his or her parents. The legislature intends to create a separate guardianship chapter to establish permanency for children in foster care through the appointment of a guardian and dismissal of the dependency.

A guardianship shall be established if the court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship rather than to terminate the parent-child relationship and proceed with adoption or to continue efforts to return custody of the child to the parent.

A Guardian's Rights and Responsibilities

Citation: Rev. Code § 13.36.050

The guardian shall maintain physical and legal custody of the child and have the following rights and duties under the guardianship:

- The duty to protect, nurture, discipline, and educate the child
- The duty to provide food, clothing, shelter, and education, as required by law, and health care for the child, including, but not limited to, medical, dental, mental health, psychological, and psychiatric care and treatment
- The right to consent to health care for the child and sign a release authorizing the sharing of health-care information with appropriate authorities, in accordance with State law

- The right to consent to the child's participation in social and school activities
- The duty to notify the court of a change of address of the guardian and the child

Unless specifically ordered by the court, the standards and requirements for relocation in chapter 26.09 RCW do not apply to guardianships established under this chapter.

If the child has independent funds or other valuable property under the control of the guardian, the guardian shall provide an annual written accounting, supported with appropriate documentation, to the court regarding receipt and expenditure by the guardian of any such funds or benefits. This subsection shall not be construed to require a guardian to account for any routine funds or benefits received from a public social service agency on behalf of the child.

The guardianship shall remain in effect until the child reaches age 18 or until the court terminates the guardianship, whichever occurs sooner.

Qualifying the Guardian

Citation: Rev. Code §§ 13.36.030; 13.36.040

To be designated as a proposed guardian in a petition under this chapter, a person must be age 21 or older and must meet the minimum requirements to care for children as established by the Department of Social and Health Services under § 74.15.030, including, but not limited to, licensed foster parents, relatives, and suitable persons.

The proposed guardian must sign a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.

Before the court can establish a guardianship for a child who has no legal parent, the court must find that one or more exceptional circumstances exist and the benefits for the child from establishing the guardianship outweigh any potential disadvantage to the child of having no legal parent. Exceptional circumstances may include, but are not limited to, the following:

- The child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption.
- The proposed guardian has demonstrated a commitment to provide for the long-term care of the child and (i) is a relative of the child; (ii) has been a long-term caregiver for the child, has acted as a parent figure to the child, and is viewed by the child as a parent figure; or (iii) the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age 12 or older, the child also has identified the proposed guardian as the preferred guardian.

Procedures for Establishing Guardianship

Citation: Rev. Code §§ 13.36.030; 13.36.040

Any party to a dependency proceeding under chapter 13.34 RCW may request a guardianship be established for a dependent child by filing a petition in juvenile court under this chapter. All parties to the dependency and the proposed guardian must receive adequate notice of all proceedings under this chapter. For purposes of this chapter, a dependent child age 12 or older is a party to the proceedings.

A guardianship shall be established if:

- All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian.
- At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least 6 consecutive months following a finding of dependency under § 13.34.030.
- All reasonably available necessary services, capable of correcting the parental deficiencies within the foreseeable future, have been provided or offered.
- There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.

Upon the request of a dependency guardian appointed under chapter 13.34 and the department or supervising agency, the court shall convert a dependency guardianship to a guardianship under this chapter.

Contents of a Guardianship Order

Citation: Rev. Code § 13.36.050

If the court has made the findings required under § 13.36.040, the court shall issue an order establishing a guardianship for the child. The order shall:

- Appoint a person to be the guardian for the child
- Specify the guardian's rights and responsibilities concerning the care, custody, control, and nurturing of the child
- Specify the guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child
- Specify an appropriate frequency and type of contact between the parent or parents and the child, if applicable, and between the child and his or her siblings, if applicable
- Specify the need for and scope of continued oversight by the court, if any

Once the dependency has been dismissed pursuant to § 13.36.070, the court shall not order the department or other supervising agency to supervise or provide case management services to the guardian or the child as part of the guardianship order.

The court shall issue a letter of guardianship to the guardian upon the entry of the court order establishing the guardianship under this chapter.

Modification/Revocation of Guardianship

Citation: Rev. Code §§ 13.36.060; 13.36.070

A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship order. The court shall deny the motion unless it finds that there is adequate cause for hearing the motion, in which case a hearing will be held on whether the modification should be granted.

Any party to a guardianship proceeding may request termination of the guardianship by filing a petition stating that there has been a substantial change in circumstances and that termination is in the child's best interests.

The court shall not terminate a guardianship unless it finds, upon the basis of facts that have arisen since the guardianship was established, that a substantial change has occurred and that termination of the guardianship is necessary to serve the best interests of the child.

The court may terminate a guardianship on the agreement of the guardian, the child if the child is age 12 or older, and a parent seeking to regain custody of the child, if the court finds by a preponderance of evidence and on the basis of facts that have arisen since the guardianship was established, that:

- The parent has successfully corrected parenting deficiencies to the degree that returning the child to the custody of the parent no longer creates a risk of harm to the child.
- The child, if age 12 or older, agrees to termination of guardianship and return to the parent.
- Termination of guardianship and return of the child to the parent is in the child's best interests.

Upon the entry of an order terminating a guardianship, the court shall:

- Grant legal and physical custody of the child to the child's parent
- Grant legal and physical custody of the child to a substitute guardian
- Temporarily place the child in the custody of the department for placement with a relative or other suitable person, if available, or in an appropriate licensed out-of-home placement

Kinship Guardianship Assistance

Citation: Rev. Code § 13.36.090

A relative guardian who is a licensed foster parent at the time a guardianship is established and who has been the child's foster parent for a minimum of 6 consecutive months preceding entry of the guardianship order is eligible for a relative guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable Federal guidelines for expenditure of Federal funds.

Within amounts appropriated for this specific purpose, a guardian who is a licensed foster parent at the time a guardianship is established and who has been the child's foster parent for a minimum of 6 consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child.

Links to Agency Policies

Washington State Department of Social and Health Services: [A Resource Guide for Relatives as Parents in Washington State](#) (PDF - 2,046 KB)

West Virginia

Current Through July 2018

Definitions

Citation: Ann. Code § 49-1-204; Pol. Man. § 1.1; 1.5

'Caregiver' means any person who is at least age 18 and (a) is related by blood, marriage, or adoption to the minor but who is not the legal custodian or guardian of the minor or (b) has resided with the minor continuously during the immediately preceding 6 months or more.

'Custodian' means a person who has or shares actual physical possession or care and custody of a child, regardless of whether that person has been granted custody of the child by any contract or agreement.

'Legal or minor guardianship' means the permanent relationship between a child and a caregiver, established by order of the court having jurisdiction over the child or juvenile, pursuant to this chapter and chapter 44 (§§ 44-1-1, et seq.).

'Guardian' means a person who has care and custody of a child as a result of any contract, agreement, or legal proceeding.

In policy: For the purposes of the placement of children, the term 'kinship/relatives' means any person related to the child by blood or marriage, including cousins and in-laws. A person who the child considers a relative, such as a godparent or other significant person whom the child claims as kin, also may be considered as a placement resource.

Legal guardianship is a legally binding relationship between a child and a caregiver, other than the child's biological parent, that may be considered as a permanent placement option for the child. This arrangement transfers all the rights and responsibilities for a child from the Department of Health and Human Resources to the caregiver through a court-sanctioned process. Parental rights are not required to be terminated in order for a child to be in a legal guardianship.

Purpose of Guardianship

Citation: Pol. Man. § 1.0

The Department of Health and Human Resources is authorized by statute to utilize legal guardianship as a viable permanency option once reunification and adoption have been ruled out.

Permanency-planning efforts should begin as soon as a child enters into the custody of the department or when it appears it may happen. All possible resources should be considered in order to arrive at the least restrictive, most appropriate environment for the child. Priority consideration must be given to the child's relatives for the most suitable placement, provided the best interests of the child are the primary consideration. Throughout the life of the child's case, appropriate family members should be sought out and considered for placement of the child or for family connections with the child.

The creation of a permanent family for children in custody is the main objective for children that are unable to be reunified with their family of origin. Adoption must be the primary choice for permanency planning, with other alternatives being considered only after adoption has been ruled out. Once reunification and adoption have been ruled out, legal guardianship may be considered, provided it would be in the child's best interests.

A Guardian's Rights and Responsibilities

Citation: Pol. Man. §§ 1.0; 1.5

A legal guardianship is a judicially created and legally binding relationship between a child and caregiver that is intended to be permanent and self-sustaining, as evidenced by the transfer to the caregiver of the following parental rights with respect to the child: protection, education, care, and control of the child; custody of the child; and decision-making. Parental rights are not required to be terminated in order to sanction a legal guardianship under § 49-2-17.

Subsidized legal guardianship is the transfer of legal responsibility for a minor child from the State to a private certified caregiver or guardian, who is provided with a monthly subsidy and/or medical card for the care and support of the child. The transfer of legal

responsibility removes the child from the child welfare system, allows a caregiver to make important decisions on the child's behalf, establishes a long-term caregiver for the child, and addresses the child's financial needs through ongoing subsidy.

Qualifying the Guardian

Citation: Pol. Man. § 2.1

Legal guardianship should be considered for a child when the following conditions have been met:

- The permanency goals of reunification and adoption have been ruled out and the reasons are documented in the case record.
- The child has resided with the prospective guardian for at least 6 months immediately prior to establishing legal guardianship and was eligible for foster care maintenance payments.
- The guardianship home was certified or approved as meeting the requirements as a foster home during the 6 months prior to establishing legal guardianship.
- The child must be at least age 12 if he or she is in the home of an unrelated caregiver, unless it is decided by the department that it would be in the child's best interests to do legal guardianship at a younger age. There is no age limit when the caregiver is a kin/relative, provided it is in the child's best interests.
- The best-interests determination must be documented in the child's case plan.
- The child must have a strong attachment to the prospective legal guardian and the guardian must have a strong commitment to caring permanently for the child.
- The child who is age 14 or older has been consulted regarding the guardianship arrangement.

Procedures for Establishing Guardianship

Citation: Pol. Man. §§ 2.0; 6.2

Legal guardianship is the permanent transfer of legal responsibility for a child in State custody to either a kin/relative or an individual other than his or her parents. Unless specified otherwise by the court, a grant of custody of a child to the department by the court is sufficient for the department to transfer legal guardianship. The department may consent to the transfer of legal guardianship when certain conditions are met.

Court action is necessary to transfer custody of the child from the department to the legal guardian. The prospective legal guardian's attorney will petition the court to request the change in legal custody of the child. A copy of the legal guardian's home study; a copy of the child's posttermination placement plan; any termination of parental rights documentation; and an original signed subsidized guardianship agreement, the application for subsidized guardianship, and an original signed consent must be submitted to the attorney for the prospective legal guardian for filing with the petition. The child's caseworker will ensure the prospective legal guardian, the child, the child's birth parents (if termination of parental rights has not occurred), and the child's attorney are notified of the date and location of the hearing.

At the hearing, the court will determine whether to grant the request for transfer of custody. The child's caseworker and prospective legal guardians must attend the hearing.

Contents of a Guardianship Order

Citation: Pol. Man. § 6.2

After the finalization of the legal guardianship, the child's caseworker will provide the legal guardians with one original signed agreement, a certified copy of the court order, and the child's original birth certificate.

Modification/Revocation of Guardianship

Citation: Pol. Man. §§ 6.3; 6.4

The legal guardianship agreement will terminate when the child reaches age 18 or is otherwise emancipated.

As soon as the department becomes aware that a legal guardianship may be disrupted, a caseworker will make contact with the family to determine what, if anything, the department can do to preserve the legal guardianship placement.

If the child is removed from an adoptive home or other permanent placement after the case has been dismissed from the court's docket, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department, and the child's counsel. The court shall schedule a permanent placement review conference within 60 days, with

notice given to any appropriate parties and persons entitled to notice and the right to be heard. The department shall convene a multidisciplinary treatment team meeting within 30 days of the receipt of notice of permanent placement disruption.

If the child is placed into the custody of the department, the department worker must make an appropriate placement for the child.

If the child's guardianship placement is disrupted due to the guardian's death or inability to continue providing for the child, provided the guardian named a successor guardian at the time the agreement was signed, the child may move to reside with the successor guardian.

Kinship Guardianship Assistance

Citation: Ann. Code § 49-4-112

For a legal guardianship subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their guardianship placement:

- They have a physical or mental disability or are emotionally disturbed.
- They are older children, part of a sibling group, or members of a racial or ethnic minority.

The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for legal guardianship of a child certified as eligible for subsidy. Before the order of legal guardianship is entered, there must be a written agreement between the family entering into the subsidized legal guardianship and the department.

Guardianship subsidies may commence with the legal guardianship placement and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. In addition, the department shall provide either Medicaid or other health insurance coverage for any child who has special needs for medical, mental health, or rehabilitative care.

After reasonable efforts have been made without the use of subsidy and no appropriate legal guardian has been found for the child, the department shall certify the child as eligible for a subsidy in the event of legal guardianship. Reasonable efforts to place a child without a subsidy shall not be required if it is in the best interests of the child because of such factors as the existence of significant emotional ties developed between the child and the prospective guardian while in care as a foster child.

Links to Agency Policies

West Virginia Department of Health and Human Resources, [Legal Guardianship Policy](#) (PDF - 186 KB)

Wisconsin

Current Through July 2018

Definitions

Citation: Ann. Stat. § 48.02

'Guardian' means the person named by the court having the duty and authority of guardianship.

'Legal custodian' means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

'Relative' means a parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, brother-in-law, sister-in-law, first cousin, second cousin, nephew, niece, uncle, aunt, stepuncle, steppaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named above, even if the marriage is terminated by death or divorce. For purposes of the Federal Indian Child Welfare Act, 25 USC 1901 to 1963, 'relative' includes an extended family member, as defined in § 48.028(2)(am), whether by blood, marriage, or adoption, including adoption under Tribal law or custom. For purposes of placement of a child, 'relative' also includes a parent of a sibling of the child who has legal custody of that sibling.

Purpose of Guardianship

Citation: Ann. Stat. § 48.977

The court may appoint a guardian of the person for a child if the court finds all of the following:

- That the child has been adjudged to be in need of protection or services and been placed or continued in a placement outside of his or her home pursuant to court order
- That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child reaches age 18
- That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child reaches age 18
- That it is not in the best interests of the child that a petition to terminate parental rights be filed
- That the child's parent or parents are neglecting, refusing, or unable to carry out the duties of a guardian
- That the agency primarily responsible for providing services to the child has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with his or her parent or parents is unlikely or contrary to the best interests of the child

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. §§ 48.02; 48.023

Legal custody is a legal status created by the order of a court that confers the right and duty to protect, train, and discipline the child and to provide food, shelter, legal services, education, and ordinary medical and dental care, subject to the rights, duties, and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

Except as limited by an order of the court under § 48.977(5)(b) or 48.978(6)(b)2., a person appointed by the court to be the guardian of a child has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including, but not limited to, the following:

- The authority to consent to marriage; enlistment in the U.S. armed forces; major medical, psychiatric, and surgical treatment; and obtaining a motor vehicle operator's license
- The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter
- The right and duty of reasonable visitation of the child
- The rights and responsibilities of legal custody, except when legal custody has been vested in another person or when the child is under the supervision of the Department of Corrections or a county department

Qualifying the Guardian

Citation: Ann. Stat. § 48.977

In determining the appropriateness of appointing a guardian under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making this decision, the court shall consider, but not be limited to, all of the following:

- Whether the person would be a suitable guardian of the child
- The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches age 18
- The wishes of the child
- If the child is an Indian child, whether the proposed guardian satisfies the order of placement preference under § 48.028(7)(b) or, if applicable, § 48.028(7)(c), unless the court finds good cause, as described in § 48.028(7)(e), for departing from that order

A strong attachment of the child to the person or a strong commitment of the person to caring permanently for the child does not, in itself, constitute good cause for departing from that order.

Procedures for Establishing Guardianship

Citation: Ann. Stat. § 48.977

A petition for the appointment of a guardian for a child may be filed by:

- The child or the child's guardian, legal custodian, or Indian custodian, or guardian ad litem
- The child's parent
- The person with whom the child is placed, if the person is nominated as the guardian
- The Department of Children and Families or a county department
- The person representing the interests of the public under § 48.09

Notice of the hearing shall be served on:

- The child if the child is age 12 or older
- The child's guardian and legal custodian
- The child's guardian ad litem and counsel
- The child's parent
- The person with whom the child is placed if the person is nominated as the guardian of the child in the petition
- Any person nominated as a successor guardian of the child in the petition
- The agency primarily responsible for providing services to the child
- If the child is an Indian child, the Indian child's Indian custodian, if any, and Tribe, if known

The court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for appointing a guardian have been met. If the court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that those conditions have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the fact-finding hearing.

Contents of a Guardianship Order

Citation: Ann. Stat. § 48.977

After receiving any evidence relating to the petition for guardianship, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

- A disposition dismissing the petition if the court determines that appointment of the person as the child's guardian is not in the best interests of the child
- A disposition ordering that the person with whom the child has been placed or in whose home placement of the child is recommended be appointed as the child's guardian or limited guardian, if the court determines that such an appointment is in the best interests of the child

In a full guardianship, a guardian shall have all of the duties and authority specified in § 48.023. In a limited guardianship, the court may order that the duties and authority of a guardian be limited as specified by the order of appointment. All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

Modification/Revocation of Guardianship

Citation: Ann. Stat. § 48.977

Any authorized person may request a revision in a guardianship order or the court may, on its own motion, propose a revision. The request or court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, and that the proposed revision would be in the best interests of the child. The court may order a revision if, at a hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and that a revision would be in the best interests of the child.

Unless the court order specifies that a guardianship be for a lesser period of time, a guardianship shall continue until the child reaches age 18 or until terminated by the court, whichever occurs earlier.

Any person authorized to petition for guardianship may request that a guardian be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the court's disposition.

A guardian may resign at any time if the resignation is accepted by the court.

A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian, and that the proposed termination of guardianship would be in the best interests of the child.

Kinship Guardianship Assistance

Citation: Ann. Stat. § 48.623

The department shall provide monthly subsidized guardianship payments to a guardian of a child if the conditions specified below have been met. The department also shall provide those payments for the care of a sibling of the child, regardless of whether the sibling meets the specified conditions if the department and the guardian agree on the appropriateness of placing the sibling in the home of the guardian.

To be eligible for a subsidized guardianship, the child must meet all of the following conditions:

- The child has been removed from his or her home under a voluntary agreement or under a substantially similar Tribal law or under a court order finding that continued placement of the child in his or her home would be contrary to the welfare of the child.
- The child has been residing in the home of the guardian for no less than 6 consecutive months.
- The child's situation precludes returning the child to his or her home or adoption as appropriate permanency options for the child.
- The child demonstrates a strong attachment to the guardian.
- If the child is age 14 or older, the child has been consulted with regarding the guardianship arrangement.

The guardian must meet all of the following conditions:

- The guardian is a relative of the child or is a person who has a significant emotional relationship with the child, similar to a familial relationship, that existed prior to or developed during the child's placement in out-of-home care.
- The guardian has a strong commitment to caring permanently for the child.
- The guardian is licensed as the child's foster parent, and the guardian and all adults residing in the guardian's home meet the requirements specified in § 48.685.
- Prior to being named as the guardian of the child, the guardian entered into a subsidized guardianship agreement with the county department or department.

Links to Agency Policies

Wisconsin Administrative Code, Chapter DCF 58, [Eligibility for the Kinship Care and Long-Term Kinship Care Program](#)

Wisconsin Department of Children and Families, [Subsidized Guardianship Policy](#) (PDF - 404 KB)

Wyoming

Current Through July 2018

Definitions

Citation: Ann. Stat. § 14-3-402

'Legal custody' means a legal status created by court order that vests in a custodian the right to have physical custody of a minor; the right and duty to protect, train, and discipline a minor; the duty to provide the minor with food, shelter, clothing, transportation, ordinary medical care, and education; and, in an emergency, the right and duty to authorize surgery or other extraordinary medical care. The rights and duties of legal custody are subject to the rights and duties of the guardian of the person of the minor and to residual parental rights and duties.

The term 'residual parental rights and duties' means those rights and duties remaining with the parents after legal custody, guardianship of the person, or both, have been vested in another person, agency, or institution. Residual parental rights and duties include, but are not limited to, the following:

- The duty to support and provide necessities of life
- The right to consent to adoption
- The right to reasonable visitation unless restricted or prohibited by court order
- The right to determine the minor's religious affiliation
- The right to petition on behalf of the minor

Purpose of Guardianship

Citation: Soc. Serv. Pol. Man., Pol. # 3.3

A legal guardian is an individual who is authorized by the court to control the person of a minor. Guardianship is designed to provide protection to the child who is deprived of the natural guardianship of his or her parents. Legal guardianship involves the transfer of legal responsibility for a child in the custody of the Department of Family Services (DFS) to a private caregiver who becomes the legal guardian of the child.

Legal guardianship shall not be initiated until reasonable efforts have been exhausted to reunite the child with his or her family, and DFS has documented that adoption is not in the best interests of the child. DFS may proceed for good cause to seek a legal guardian without parental consent, provided that legal notice is given of the legal guardianship petition hearing.

A Guardian's Rights and Responsibilities

Citation: Ann. Stat. § 14-3-402

The legal custodian of a child has the following rights and duties:

- The right to have physical custody of the child
- The right and duty to protect, train, and discipline the child
- The duty to provide the child with food, shelter, clothing, transportation, ordinary medical care, and education
- In an emergency, the right and duty to authorize surgery or other extraordinary medical care

The rights and duties of legal custody are subject to the rights and duties of the guardian of the person of the minor and to residual parental rights and duties.

Qualifying the Guardian

Citation: Soc. Serv. Pol. Man., Pol. # 3.3

DFS shall give preference to an adult relative caregiver over a nonrelated caregiver when determining a placement for a child, provided the adult relative caregiver meets all relevant child protection standards.

All of the following requirements must be met before the legal guardianship is finalized:

- The child is younger than age 18 and has been in the legal custody of DFS immediately prior to establishing the legal guardianship.
- The child has resided with the prospective legal guardian for at least 6 months immediately prior to filing the petition for legal guardianship and entering into a legal guardianship. This requirement may be waived for sibling groups when at least one sibling meets all legal guardianship requirements.
- Reunification of the child with his or her family and adoption have been ruled out as permanency goals despite reasonable efforts made to reunite the family or to seek adoption of the child.
- The child has a strong attachment to the prospective legal guardian and the prospective legal guardian has a strong commitment to caring permanently for the child.
- A child age 14 and older has participated in creating the legal guardianship arrangement.
- The legal guardian is able to support the child financially or is able to with the assistance of a subsidy or other resources that may be available to the child.

If the prospective legal guardian is not already an approved adult relative home or a certified foster home, the following requirements must be met:

- The prospective legal guardian must be older than age 21 unless the age requirement has been waived by the DFS district manager.

- Five references, including two from relatives and three from nonrelatives, must be submitted.
- A home study and a health and safety checklist must be completed.
- All background check requirements for all adults living in the home shall be completed.

Procedures for Establishing Guardianship

Citation: Soc. Serv. Pol. Man., Pol. # 3.3.1

Once a determination is made to proceed with legal guardianship or a court orders DFS to proceed with legal guardianship, the DFS caseworker shall immediately complete and submit a notification of guardianship request to the attorney general's office.

The attorney general's office will review the information and make a determination if legal guardianship is legally appropriate. If legal guardianship is appropriate, the attorney general's office will draft a petition for guardianship, consent to guardianship for the parents, and an affidavit and consent to guardianship for the proposed legal guardian. The caseworker shall obtain the signature of the prospective legal guardian and parents on the appropriate document within 2 weeks of receipt and return the signed documents to the attorney general's office.

Once the signed documents are returned to the attorney general's office, it will file the petition for guardianship and proceed with obtaining an order appointing guardian. If a hearing is required, the attorney general's office will notify the caseworker of the date and time of the hearing.

Contents of a Guardianship Order

This issue is not addressed in the statutes and regulations reviewed.

Modification/Revocation of Guardianship

This issue is not addressed in the statutes and regulations reviewed.

Kinship Guardianship Assistance

Citation: Soc. Serv. Pol. Man., Pol. # 3.3.2

If the legal guardian's financial concerns are the only barrier to pursuing a legal guardianship, DFS may negotiate a legal guardianship assistance/subsidy for a child who was in DFS custody when the legal guardianship was established. The caseworker shall have the prospective guardian submit an application for guardianship subsidy when the permanency goal becomes legal guardianship and the prospective legal guardian is identified. The caseworker shall develop a guardianship assistance agreement with the prospective guardian if he or she has applied for a legal guardianship assistance/subsidy. The agreement shall be completed and signed before the legal guardianship is finalized. Legal guardianship assistance/subsidy shall not be paid if the agreement was not finalized prior to finalization of the legal guardianship.

Under no circumstances shall the legal guardianship assistance/subsidy exceed the foster care maintenance payment that would have been paid on behalf of the child if the child had remained in a foster family home.

A legal guardian may apply for Temporary Assistance for Needy Families or for the legal guardianship assistance subsidy for the child, but may not receive both. The legal guardian should apply for whichever program will best meet the needs of the child. In many cases, a child in a legal guardianship will be eligible for Medicaid or other State medical programs. The caseworker shall refer families taking legal guardianship of a child to the benefit specialist staff in the local DFS office to apply for medical assistance.

Funding for the State-funded legal guardianship assistance/subsidy program is contingent upon the availability of State money and is subject to termination at the annual review if funds are not available.

Links to Agency Policies

Wyoming Department of Family Services, [Social Services Division Policy](#), select chapter 3, section 3.3, Legal Guardianship.



U.S. Department of Health and Human Services
Administration for Children and Families
Administration on Children, Youth and Families
Children's Bureau

