



## INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY

**Chapter 10:** Guardianship and Adoption

**Section 23:** Guardianship Overview

**Effective Date:** July 1, 2023

**Version:** 2

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### POLICY OVERVIEW

When reunification and adoption are not in a child's best interest, legal guardianship may secure permanency for the child. Legal guardianship is a permanency option, which uses court intervention to judicially create a legal relationship between a child and a responsible adult or relative caregiver. Guardianship is intended to be self-sustaining and provide legal permanency for the child without the necessity of terminating the parental rights of the parents. Transferring legal responsibility through the establishment of a guardianship removes the child from the child welfare system, allows the caregiver to make important decisions on the child's behalf, and establishes a long-term caregiver for the child.

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### PROCEDURE

When reunification with parents is unsafe or not in the child's best interest, the Indiana Department of Child Services (DCS) will convene a Child and Family (CFT) Meeting and/or Case Plan Conference to consider if legal guardianship with a responsible adult is an appropriate alternative to reunification. DCS will discuss legal guardianship planning and identify any needed services for a child in out-of-home care with a Permanency Plan of Guardianship.

The Family Case Manager (FCM) will:

1. Assess the child's readiness for guardianship and develop a plan to facilitate a smooth transition to this legal permanency option. See policy 10.02 Assessing and Preparing the Child for Guardianship and Adoption for additional guidance;

**Note:** DCS will offer support and guidance through the process and may review the 10.C Tool: Difference Between Adoption and Guardianship to assist the prospective guardian in making a decision when it is in the best interest of the child. See policy 10.04 Resource Parent's Role in Preparing the Child for Guardianship or Adoption.

2. Update the Case Plan/Prevention Plan to reflect the court approved Permanency Plan of Guardianship. See policy 5.08 Developing the Case Plan/Prevention Plan;
3. Ensure the following persons are notified of the court's ruling regarding the Permanency Plan:
  - a. The child (if age and developmentally appropriate),
  - b. Prospective guardian,
  - c. Child's parent, guardian, or custodian, and attorney of record,
  - d. Resource parent (if different from the prospective guardian),

- e. Mental health provider or therapist, if applicable,
- f. Guardian ad Litem (GAL) or Court Appointed Special Advocate (CASA), if applicable,
- g. Members of the CFT, and
- h. Any fit and willing relative or person who DCS knows has a significant relationship to the child.

4. Determine if the resource parent plans to pursue guardianship;

**Note:** If the resource parent is interested in being the child's guardian, determine whether the relationship between the resource parent and the child is established and significant. If so, the resource parent may be designated as a relative. The designation as a relative may impact eligibility for the guardianship assistance program (GAP). See policy 14.01 Guardianship Assistance Program (GAP).

5. Staff the resource parent's decision to be a guardian with the FCM Supervisor and the DCS Staff Attorney if applicable;
6. Provide the prospective guardian with information GAP. See policies 14.01 Guardianship Assistance Program (GAP) and 14.02 Negotiations for GAP Assistance;
7. Discuss the resource parent's role in preparing the child for guardianship, and assist the resource parent in supporting the child in achieving permanency;

**Note:** This discussion should occur regardless of whether the resource parent is the prospective guardian.

8. Ensure sibling connections are maintained when possible. See policies 8.12 Developing the Visitation Plan and 10.05 Maintaining Sibling Connections;
9. Convene a CFT Meeting or Case Plan/Prevention Plan conference to identify needs, services, and/or reasonable accommodations to prepare the child and the prospective guardian for the guardianship. See policy 5.07 Child and Family Team (CFT) Meetings for additional information;
10. Once the guardianship is finalized, discuss case closure with the FCM Supervisor. See policy 5.12 Closing a CHINS case; and
11. Upload all documentation into the case management system.

The FCM Supervisor will:

1. Staff the case with the assigned FCM and make recommendations regarding the Permanency Plan and designation of the resource parent as a relative, if applicable;
2. Ensure the Case Plan/Prevention Plan is updated to reflect the new Permanency Plan;
3. Assist the FCM with the guardianship process, as needed;
4. Review and approve services needed for the child and guardian; and
5. Discuss case closure with the FCM and assist with any identified barriers.

The Adoption Consultant will:

1. Provide permanency consultation for the child with a permanency plan of guardianship when a prospective guardian has not been identified, or the current caregiver is unsure about guardianship and permanency is stalled; and
2. Participate in CFT Meetings to provide subject matter expertise on guardianship.

The DCS Staff Attorney will:

1. Meet with the FCM, FCM Supervisor, and/or Local Office Director (LOD), as appropriate, to determine the next steps once guardianship is identified as a permanency option;

2. Ensure appropriate findings are made regarding a permanency plan of guardianship with the identified guardian if known (see policies 6.10 Permanency Plan and 6.11 Permanency Hearing);
3. Receive notification if a guardianship petition is filed, modified, or terminated for all guardianships created during an Informal Adjustment (IA) or for all guardianships filed after July 1, 2011, regarding any child who was the subject of an open or closed Child in Need of Services (CHINS) action. See Legal Guardianship Administrative Letter; and
4. Staff with the LOD to determine how to proceed upon receiving notification of a motion or petition to modify or terminate a previously granted guardianship of a ward, or former ward.

The DCS LOD will collaborate with the DCS Staff Attorney to determine the next steps for any motions or petitions to modify or terminate a previously granted guardianship of a ward, or former ward.

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## RELEVANT INFORMATION

### Definitions

#### Legal Guardianship

Legal Guardianship is the transfer of parental responsibility and legal authority for a minor child to an adult caregiver who intends to provide permanent care for the child. Guardianship may be established with or without Termination of Parental Rights (TPR).

#### Relative

A relative is defined in IC 31-9-2-107(c) as any of the following in relation to a child:

1. A parent;
2. A grandparent;
3. A brother;
4. A sister;
5. A stepparent;
6. A stepgrandparent;
7. A stepbrother;
8. A stepsister;
9. A first cousin;
10. An uncle;
11. An aunt;
12. Any other individual with whom a child has an established and significant relationship.

#### Other Relative

An individual who is not related by blood, marriage or adoption (as indicated in #12 of the definition of relative) may be considered a relative for purposes of placement and the Guardianship Assistance Program (GAP) when the individual has an established and significant relationship with the child.

The relationship with the child will be "other relative" and must meet the following three (3) criteria:

1. Have the characteristics of a family relationship. The relationship should have the same characteristics or be similar to the relationship that the child has with an individual related by blood, marriage, or adoption;
2. Be verified through the following:

- a. Interviews,
  - b. Attested by the Statement of Attestation Regarding Relationship form, or
  - c. Oral designation of the child or of another person, including other relatives related to the child by blood, marriage, or adoption; and
3. Be described by the child, if age appropriate, as someone with whom the child has developed a significant emotional relationship (this may include a resource parent).

**Note:** If the individual is a resource parent with whom the child currently resides, the child must have resided in the home for a minimum of 12 months. The resource parent will be designated as “other relative” through approval by local office Management upon determination that guardianship is in the best interest of the child.

Credible evidence showing that the individual performs or has performed a substantial role in the upbringing or material support of the child should be documented in the case management system. If the individual is a resource parent, DCS must seek a court order acknowledging the foster parent as a relative following the court’s approval of the permanency plan change to guardianship, if it is determined that a child is eligible for GAP.

**Note:** Placement with a suitable and willing relative related by blood, marriage, or adoption must be ruled out before considering any other out-of-home placement, with the first consideration being given to a suitable and willing noncustodial parent.

#### Forms and Tools

- [10.C Tool: The Differences between Adoption and Guardianship](#)
- Case Plan/Prevention Plan (SF 2956) – Available in the case management system
- [Legal Guardianship Administrative Letter](#)

#### Related Policies

- [5.07 Child and Family Team Meetings](#)
- [5.08 Developing the Case Plan/Prevention Plan](#)
- [5.12 Closing a CHINS Case](#)
- [6.10 Permanency Plan](#)
- [6.11 Permanency Hearing](#)
- [10.02 Assessing the Child’s Readiness for Guardianship or Adoption](#)
- [10.04 Resource Parent’s Role in Preparing the Child for Adoption or Guardianship](#)
- [10.05 Maintaining Sibling Connections](#)
- [14.01 Guardianship Assistance Program \(GAP\)](#)
- [14.02 Negotiations for Guardianship Assistance Program](#)

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#### LEGAL REFERENCES

- [IC 29-3-5-4.1: “Disability”; guardianship](#)
- [IC 31-9-2-107\(c\): “Relative”](#)
- [42 USC. 673\(d\): Kinship guardianship assistance payments for children](#)
- [42 USC 12102: Definition of disability](#)
- [465 IAC 4-2-1: Title IV-E Guardianship Assistance Program and State Guardianship Assistance Program](#)

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## **PRACTICE GUIDANCE- DCS POLICY 10.23**

*Practice Guidance is designed to assist DCS staff with thoughtful and practical direction on how to effectively integrate tools and social work practice into daily case management in an effort to achieve positive family and child outcomes. Practice Guidance is separate from Policy.*

N/A

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