



# Legal guardianship

## What is guardianship?

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.

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.

## Why is guardianship important? Is it best practice?

For many children, reunification with parents is the primary goal. However, when reunification is unsafe or not in the child's best interest, adoption or legal guardianship with a caring adult are the primary alternatives.

Relative care has also become a preferred option for many child welfare systems, and federal law has been clear that it is preferred placement when children are placed into foster care because they cannot safely remain with their parents.

Legal 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. 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.

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.

### **When can guardianship be considered?**

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, which is typically six months.
- 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.

### **Who can be a guardian?**

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 the minor a guardian if the parent is unable or unwilling to provide appropriate care for his or her child or parental rights have been terminated.

Guardianship will be considered 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 six months), and the placement has been appropriate and stable.

### **Other factors to be considered**

Since guardianship is intended to be a permanent placement, the following should be considered in the decision:

- 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 relationship 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 interest of the child. [IC 31-10-2-2](#) defines the best interests of the child.

## Child and family team meeting and permanency planning

The family case manager should consult with their supervisor and local office attorney to consider implications of various legal permanency paths to prepare for discussion with family members and parties.

As with all team meetings, preparation for the discussion should be completed with the affected parties (both parents and caregivers), including the child. If the child can communicate verbally or nonverbally, discuss their views and perspectives and assess their goals and needs.

Team members should convene to discuss next steps when reunification efforts are not successful. All efforts should be made to include the caregivers, birth parents and CASA/GAL.

## Resources

Casey Family Programs. (January 2018). Guardianship Assistance Policy and Implementation: A National Analysis of Federal and State Policies and Programs. Retrieved from <https://www.casey.org/guardianship-assistance-policy-and-implementation-a-national-analysis-of-federal-and-state-policies-and-programs/>

Child Welfare Information Gateway. (2019). *Kinship guardianship as a permanency option*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Retrieved from <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/kinshipguardianship/>

Indiana Child Welfare Policy Manual-Chapter 5.3-Engaging the Family. Retrieved from <https://www.in.gov/dcs/files/5.03%20Engaging%20the%20Family.pdf>

Indiana Child Welfare Policy Manual- Chapter 5.7- Child and Family Team Meetings. Retrieved from <https://www.in.gov/dcs/files/5.07%20Child%20and%20Family%20Team%20Meetings.pdf>

Indiana Child Welfare Policy Manual-Chapter 5.8-Developing the Case Plan. Retrieved from <https://www.in.gov/dcs/files/5.08%20Developing%20the%20Case%20Plan.pdf>

Indiana Child Welfare Policy Manual-Chapter 6.10-Permanency Plan. Retrieved from <https://www.in.gov/dcs/files/6.10%20Permanency%20Plan.pdf>

Indiana Child Welfare Policy Manual-Chapter 6.11-Permanency Hearing. Retrieved from <https://www.in.gov/dcs/files/6.11%20Permanency%20Hearing.pdf>

Indiana Child Welfare Policy Manual-Chapter 8.1-Selecting a Placement Option. Retrieved from <https://www.in.gov/dcs/files/8.01%20Selecting%20a%20Placement%20Option.pdf>