



STATE STATUTES
CURRENT THROUGH JULY 2018

Kinship Guardianship as a Permanency Option

To access the statutes for a specific State or Territory, go to [State Statutes Search](#).

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.

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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.

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.

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.

¹ The word "approximately" is used to stress the fact that States frequently amend their laws and applies to all data in this publication. The information in this publication is current only 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](#).

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

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.

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.

⁶ For more information on the home study process, see Information Gateway's [Home Study Requirements for Prospective Foster Parents](#).

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.

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.

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.

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.
- 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.

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. For a State-by-State listing of age of majority statutes, see the [Age of Majority webpage](#).

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

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
- 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.

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.

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

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 the Children's Bureau's [Title IV-E Guardianship Assistance webpage](#).

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). 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
 - 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.
- 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.

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

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. To access more information for each State, go to the [State Statutes Search](#).

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This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, 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.

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



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