

Proposed Temporary Guardianship and Full/Permanent Guardianship

When family is outside the child welfare system.

Introduction

In what situations is temporary and full/permanent guardianship used?

Parent(s) is absent and does not provide for their minor child's care or maintenance. A person interested in the welfare of a minor files petition for guardianship. Approved guardian supports minor and is able to provide him or her school access, consent to medical care, and ability to access other services the child needs.

How does it differ from custody?

Guardianship is similar to third party custody as they have rights over the child. The court may order parent(s) to pay reasonable support and order parenting time and contact of the minor with his or her parent(s).

However, unlike custody, guardian must file yearly reports to the court so that the court can determine if the guardianship continues to provide for the minor's welfare and the necessity of continuing the guardianship.

COURT PETITION

A person interested in the welfare of the minor (relative/fictive kin), or a minor if 14 years or older may petition for the appointment of a guardian for the minor.

Procedure: The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

- The minor, if 14 years of age or older.
- The person who had the principal care and custody of the minor during the days preceding the date of the petition.
- Each living parent of the minor, or if neither of them is living, the adult nearest of kin to the minor.

COURT GRANTS TEMPORARY GUARDIANSHIP

Court grants **temporary** guardianship (up to six months) to relative/fictive kin pending a hearing on **full/permanent** guardianship.

COURT HEARING

Full/permanent guardianship granted by court:

- Notice to parties given and hearing is held.
- The Court may appoint a guardian for an unmarried minor if any of the following circumstances exist:
 - The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, by judgement of divorce or separate maintenance, by death, by judicial determination of mental incompetency, disappearance, or by confinement in a place of detention.
 - The parent(s) do permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent(s) when the petition is filed.
 - All of the following:
 - The minor's biological parents have never been married to one another.
 - The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
 - The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

Upon Hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, and the minor's welfare will be served by the requested appointment, the court shall make the appointment. In other cases the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare.

ANNUAL REVIEW

The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if minor is under 6 year of age. The guardian has duties that include filing an annual report until the child reaches the age of majority.

REVIEW PROCESS

In conducting the review the court shall consider all the following factors. The parent's and guardian's compliance with either of the following, as applicable:

- Whether the guardian has adequately provided for the minor's welfare.
- The necessity of continuing the guardianship.
- The guardian's willingness and ability to continue to provide for the minor's welfare.
- The effect upon the minor's welfare if the guardianship is continued.
- Any other factor that the court considers relevant to the minor's welfare.

The court may order the local department of social services if there is a concern of abuse or neglect or a court employee or agent to conduct an assessment and file a written report of the assessment regarding these factors. Upon completion of a guardianship review, the court may either continue the guardianship or schedule or conduct a hearing on the status of the guardianship. Court will use the best interest standard.

TERMINATION

As court conducts termination of guardianship the court will use the best interest of the minor standard.

Proposed Limited Guardianship

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COURT PETITION

Petition filed by the minor's parent(s).

APPOINTMENT

Conditions needed to grant petition:

- The parents with custody of the minor consent or, in the case of only 1 parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.
- The parent(s) voluntarily consent to the suspension of their parental rights.
- The court approves a limited guardianship placement plan agreed to by both of the following parties:
 - The parents with custody of the minor, in the case of only 1 parent having custody of the minor, the sole parent who has custody of the minor.
 - The person or persons whom the court will appoint as the minor's limited guardian.

Court approves a placement plan

- The reason the parent or parents are requesting the court to appoint a limited guardian for the minor.
- Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship
- The duration of the limited guardianship.
- Financial support for the minor.
- Any other provision that the parties agree to include the plan.

ANNUAL REVIEW

The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if minor is under 6 year of age. The guardian has duties that include filing an annual report until the child reaches the age of majority.

REVIEW PROCESS

In conducting the review the court shall consider all the following factors.

- The parent's and guardian's compliance with either of the following, as applicable:
 - A limited guardianship placement plan
 - A court-structured plan
- Whether the guardian has adequately provided for the minor's welfare.
- The necessity of continuing the guardianship.
- The guardian's willingness and ability to continue to provide for the minor's welfare.
- The effect upon the minor's welfare if the guardianship is continued.
- Any other factor that the court considers relevant to the minor's welfare.

The court may order the local department of social services if there is a concern of abuse or neglect or a court employee or agent to conduct an assessment and file a written report of the assessment regarding these factors. Upon completion of a guardianship review, the court may either continue the guardianship or schedule or conduct a hearing on the status of the guardianship. Court will use the best interest standard.

TERMINATION

Upon petition, the court shall terminate limited guardianship, if either both parties consent or minor's parent(s) have substantially complied with placement plan.

- After notice and hearing on a petition to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the Termination

For a petition to terminate a guardianship where parties do not consent or parent does not substantially comply with the placement plan, after notice and hearing, the court may do any of the following:

- Terminate the guardianship if the court determines that it is in the best interests of the minor, and do any of the following:
 - Enter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination
 - Order the Local Department of Social Services to supervise the transition period when the minor is being reintegrated into his or her parent's home.
 - Order the Local Department of Social Services to provide services to facilitate the minor's reintegration into his or her parent's home.
- Continue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor, and do any of the following:
 - If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:
 - The limited guardianship placement plan.
 - A court-modified limited guardianship placement plan.

Current routes to address scenario above?

- A relative/fictive kin may provide informal kinship care or seek legal and physical custody under current law.
- No intermediate solution exists for parents in crisis.
- Virginia does have a statute, Power of Attorney to Delegate Parental or Legal Custodial Powers, but this avenue requires involvement of a licensed child placing agency.

When family is in the child welfare system

PROPOSED FULL/PERMANENT GUARDIANSHIP

The court can appoint a guardian for a minor once the abuse and neglect case has been adjudicated.

Note: Replacing '*legal custody*' phrase, currently in code, with '*full/permanent guardianship*' when appointment is made by the court.

Important Note: '*Guardianship*' will now replace '*legal custody*' regardless of the minor being in or out of the child welfare system. There will no longer be third-party custody, which will only require a code change from '*legal custody*' to '*guardianship*'. This change provides consistent nomenclature whether the minor is in or out of the child welfare system when courts are granting legal rights to relative/fictive kin for the minor.

Note: '*Guardianship*' is a more neutral term rather than '*custody*', and better understood by the public. This leaves the term '*custody*' solely for the purpose between biological parents.