

JV-350-INFO Becoming a Child's Guardian in Juvenile Court

This form is about becoming the guardian of a child at the end of the child's juvenile court case if the child cannot return home or be adopted.

The form explains:

- Who can become a guardian;
- How to ask to become a guardian in juvenile court;
- The differences between a foster parent, a guardian, and an adoptive parent; and
- A guardian's legal rights, duties, and eligibility for financial help.

To become the guardian of a child who does *not* have a juvenile court case, you must ask the *probate* court. Read Judicial Council forms GC-205, GC-505, and GC-510 to learn more about probate guardianships.

For more information, visit the California Courts website at www.courts.ca.gov/1206.htm or talk to a lawyer with experience in juvenile court. Learn how to find a lawyer on the website at www.courts.ca.gov/selfhelp-findlawyer.htm.

1 What is a guardian?

A guardian is a person, other than a parent, who has legal and physical custody of a child and can make the decisions that a parent can about the child's care and control, residence, education, and medical treatment.

2 Who can become a guardian in juvenile court?

To become a child's court-appointed guardian, you must:

- Be an adult (18 years old or older);
- Not be the child's parent; and
- Be approved by the county child welfare agency or juvenile probation department.

3 Can a relative be appointed guardian?

Yes. The juvenile court can appoint any approved adult, including any relative except for the child's parent.

4 How does a juvenile court case start?

A social worker or prosecuting attorney files a petition asking the court to make orders to keep the child and the community safe. Sometimes, the court decides that a child cannot live safely in a parent's home. And the court cannot let the child go home unless the home is safe.

5 If the child cannot live safely at home, what happens?

If the court cannot let a child go home, the social worker or probation officer will find a safe home where the child can live. They will try to find a relative to care for the child. If they can't find a relative, they will look for a nonrelative to care for the child. The initial caregiver often becomes a foster parent if approved as a resource family.

If you want to be a child's foster parent, tell the social worker or probation officer right away. Ask how you can get approved as a resource family. A foster parent is often appointed as guardian. Waiting too long can prevent the child from ever being placed with you.

6 Is a foster parent the same as a guardian?

No. A foster parent is *not* a guardian, but the court can and often will appoint a foster parent as a guardian. Foster parents have legal rights, including:

- The right to receive notice of the child's court hearings and go to the hearings; and
- The right to give the court information about the child's needs.

7 How is a guardian different from a foster parent?

Foster parents and guardians are both responsible for taking care of other people's children. But there are important differences.

- **Permanence.** Foster care is intended to be temporary; it can end at any time. A guardianship gives a child a stable, lasting home and relationship.
- **Court supervision.** The court holds review hearings every six months for a child in foster care. A social worker or probation officer visits a foster placement regularly. In a guardianship, no regular hearings or visits are required unless the court keeps the juvenile case open.

- **Duties.** A foster parent provides food, clothing, housing, and emotional support to the child under the supervision of a social worker or probation officer. A guardian has more rights and duties toward the child, but may receive fewer services and less personal support.

8 Who else can be involved in the child's court case?

The child's relatives. If you are a relative, even if not the child's foster parent or caregiver, you can still give the court important information in writing.

9 Will the child be returned to the parent?

In most cases, the social worker or probation officer works with the family by giving them services so that the child can return to live at home.

Sometimes the court decides the child will not be able to return home safely. If that happens, the court will deny or stop services for the parent. The social worker or probation officer will recommend to the court a permanent plan for the child in a written report.

10 Is guardianship a permanent plan?

Yes. A guardianship is one of three authorized permanent plans. It is intended to last until the child turns 18 years of age. If the child cannot return home, adoption is the preferred permanent plan because it is more stable and secure. (Later, this form talks more about adoption.) But if adoption is not a legally available option, the court will try to appoint a guardian for the child.

HOW CAN I BECOME THE CHILD'S GUARDIAN?

11 How do I ask to become the guardian?

If you want the court to appoint you the child's guardian, you should:

- Tell the social worker or probation officer right away; and
- Ask the judge at a hearing as soon as you can.

Think carefully! If the court appoints you, the guardianship will last until the child turns 18. The court will not "undo" or end a guardianship unless:

- The situation has changed since appointment; and
- It is in the child's best interests to end it.

12 What are the steps to becoming a guardian?

There are several steps to becoming a child's guardian in juvenile court:

- The social worker or probation officer will interview you and visit your home to make sure you, your home, and everyone living there are safe for the child.
- The social worker or probation officer will write a report to the court to recommend a permanent plan for the child.
Note: If you are not recommended as guardian, ask the social worker or probation officer if they will name you as a prospective successor guardian. Then you might be assessed and appointed if the first appointed guardian can no longer serve.
- There will be a court hearing to decide the child's permanent plan. You will get a notice that tells you when and where the hearing will happen.
- Go to the hearing and talk to the judge. The child's parents and other people interested in the case can also go to the hearing and tell the judge what they think about you being the child's guardian.

13 How does the court decide whether to appoint me as guardian?

The court will consider:

- Whether the child can be adopted;
- The recommendation in the agency's report;
- What you and other people say at the hearing; and
- Any other reasons for or against appointing you as guardian.

The court will appoint you as guardian if it decides that:

- A guardianship is best for the child; *and*
- You would be a good guardian.

14 What if the court appoints me as guardian?

If the court appoints you as guardian, take the order to the clerk and ask for a certified copy of *Letters of Guardianship* (form JV-330). That form is proof that you are the child's guardian. Make copies of this form and keep the certified copy in a safe place.

Take a copy of the form with you whenever you:

- Take the child to a doctor, dentist, or therapist;
- Sign the child up for school or go to school meetings; or
- Travel with the child.

15 Will the court oversee me as guardian?

When it appoints you, the court can give you other orders, such as to notify the court if you move or to allow the parents or siblings to visit and spend time with the child. You must obey the court's orders.

After it appoints you, the juvenile court may oversee the guardianship to make sure you perform your duties. You won't usually have to go to court unless the court keeps the juvenile case open or someone asks the court to change its orders or make new orders.

Note: Even after the juvenile case is closed, anyone, including you, can use *Request to Change Court Order* (form JV-180) to ask the juvenile court to give you directions, review your plans or actions as guardian, change its previous orders, or end the guardianship.

The social worker or probation officer might also offer permanent placement services to the child. If you're not related to the child, a social worker will visit you every six months and update a voluntary case plan. If you don't do what the case plan says, they might ask the court to order you to do it.

16 When will the guardianship end?

A guardianship lasts until the child turns 18 unless:

- The child dies before then;
- The child is adopted (by you or another adult); or
- The child is emancipated (or freed from your control) by getting married, entering active military duty, or getting a court order.

The court can order a guardianship to end before the child turns 18, but only if the proposed alternative is in the child's best interests; that is, it would be *better for the child* than continuing the guardianship.

Note: If the child keeps living with you after turning 18, you can get financial help if the child is eligible for KinGAP or Extended Foster Care and you meet other conditions. See page 5 for more information about financial support generally.

17 Can the court replace me as guardian?

Yes. The court will consider replacing you as guardian if asked by:

- You, the guardian;
- Any other interested adult; or
- The child, if 14 years old or older.

The judge will replace you only if the situation has changed and it is in the child's best interests.

18 How is guardianship different from adoption?

Both a guardian and an adoptive parent have legal and physical custody of the child in place of the birth parents. But there are many differences.

Permanence. In a guardianship, the parent's rights are only *suspended*. The court can end a guardianship and give the parents back their rights if that would be in the child's best interests. In an adoption, parental rights are *permanently ended*. The adoptive parent is the child's legal parent. The birth parents cannot get their rights back.

Visitation. In a guardianship, the court can make an order allowing the parents or other relatives to visit a child. The guardian must obey the visitation order, as well as all other court orders. In an adoption, parents and other relatives lose their rights to visit the child unless the court and the adoptive parents agree that they can have contact after the adoption.

Duration. A guardianship lasts until the child turns 18 unless something happens to end the guardianship before then. (A court can order a guardianship to end if that is in the child's best interests.) An adoption is intended to last forever. A court can end an adoption only by terminating parental rights in a new juvenile or family law case.

Court oversight. The court controls a guardianship and can make orders, including to replace the guardian or end the guardianship, if someone asks and the request is in the child's best interests. The court does not oversee an adoption once it is final.

Inheritance. A child in a guardianship can inherit property from a parent if the parent dies without a will. If the court knows the child might inherit property, it may appoint a "guardian of the estate" to manage the property. An adopted child usually has no right to inherit from a birth parent, but may receive a gift from a birth parent's will or trust.

WHAT ARE A GUARDIAN'S RIGHTS & DUTIES?

Subject to the court's orders, a court-appointed guardian has the same rights to legal and physical custody of the child as a parent does. In general, you must care for and control the child the same way a parent would.

Specifically, that means:

19 Arrange a place for the child to live

If you move the child to a new address in California, you must notify the court in writing. To move the child out of California, you must get court approval first. Use form JV-180 to ask the court to approve. Other states have different guardianship laws. If you plan to move to another state, find out about your legal rights and duties in that state.

20 Arrange for the child's health care

You can allow (*consent to*) most medical or dental treatment for the child. But if the child is at least 14 years old and does not want to have a non-emergency surgery, you must get permission from the court first.

The law also allows older and more mature children to get some medical treatment on their own without your approval, including:

- Outpatient mental health treatment;
- Reproductive health care; and
- Drug and alcohol treatment.

21 Provide for the child's education

You can choose the child's school and learning programs just as a parent can. In special situations, the court may also be involved in these decisions. Pay attention to how the child does in school, and meet with the child's teachers. If the child needs special education or other specialized services, you can also ask the school or other providers for these services.

22 Access social services

You can get help for the child from other programs, such as:

- Head Start;
- Regional centers for persons with developmental delays or disabilities;
- Health care services; and
- After-school care.

23 Give consent to the child's marriage

You can allow the child to marry, but you must get the court's permission first. Once the child gets married, the guardianship will end.

24 Give consent to the child's military service

You can allow the child to enlist in the U.S. military. Once the child enters active duty, the guardianship will end.

25 Give consent for the child's driver's license

The child cannot get a driver's license without your written permission. (See your duties described below.)

26 Pay for harm caused by child's driving

You will have to pay for any damage the child causes when driving. The law limits how much money you can be forced to pay. If you're concerned about this duty, you should talk to a lawyer.

You must get insurance to cover the child when driving. (The child cannot get a license without your written permission.) If you change your mind later, you can sign a form at the DMV to cancel the child's driver's license.

27 Pay for harm caused by child's other acts

Willful misconduct. In most cases, a guardian can be made to pay only for harm to another person caused by the child's willful misconduct. There is usually a limit about how much you may need to pay.

Negligent conduct. You can be made to pay for harm caused by the child's negligent conduct. If you're concerned about this duty, you should talk to a lawyer.

28 Pay for the child's needs

The parents are still legally responsible for child support, but you can accept this responsibility. You can get money to help you support the child. See page 5 for more information.

29 Obey all court orders

The court may require you to accept other duties. For example, the judge may order you to take the child to visit a parent or other relative. You must do what the court orders.

WHAT FINANCIAL HELP CAN I RECEIVE?

You may be able to get financial help from the county, state, or federal government. The type of help depends on the child's eligibility and their relationship to you.

Important! Before you become the child's guardian, ask the child's social worker or probation officer or a lawyer if you will qualify for financial help.

If the child is related to you

If you become the guardian of a child who is a relative, you may qualify for financial help from these programs:

- **KinGAP program:** If the child has lived with you for at least six months after resource family approval, you sign a written agreement, and the court dismisses the case, you can qualify for KinGAP payments. KinGAP gives you the same monthly payments as a foster parent caring for a foster child, including any rate the county might pay to care for the child's special needs. You can receive KinGAP in any county or state, but the amount may change based on where you live. In California, the payments are the same amount as foster care payments.
- **Approved Relative Caregiver (ARC) or foster care program:** If the court keeps the juvenile case open after appointing you guardian, you can receive ARC or foster care payments instead of KinGAP.
- **CalWORKS (cash assistance):** In very rare situations, you may not qualify for KinGAP, foster care, or ARC payments. In those cases, you may still qualify for CalWORKS payments. If you have a low income, you may get a full CalWORKS grant. If your income is too high to qualify for a full grant, you may still receive a "child-only" CalWORKS grant.
- **Health care:** Children who qualify for KinGAP can get health care through Medi-Cal.
- **Independent living program (ILP):** Beginning at age 16, most children can receive ILP funds and services to help them become successful adults. The services available depend on the child's age when KinGAP payments started.

If the child is NOT related to you

In California, guardians who are not related to the child are eligible for foster care payments from the state. You can receive these payments in any county or state, but the

amount may change based on where you live. Before you move, ask if the rate will change! If you receive these payments, a case worker will visit you every six months.

- **Health care:** Children who qualify for foster care payments can get health care through Medi-Cal.
- **Independent living program (ILP):** Beginning at age 16, most children can receive ILP funds and services to help them become successful adults.

If you keep supporting the child after age 18

Payments can continue after the child turns 18 if you continue to care for and support the youth, the youth meets all other eligibility requirements, and you both sign written agreements.

Generally, KinGAP payments end when a child turns 18, unless the payments started after the child turned 16 (they continue until age 21) OR the child has a mental or physical disability (funding continues until 21) OR the child is in high school (funding continues until 19 or graduation).

Important! Talk to the child's social worker or probation officer or a lawyer a few months *before* the child turns 18 to make sure the child doesn't miss any payments.

Other financial help

If you do not qualify for KinGAP or foster care payments, you may be able to get social security, Supplemental Income (SSI), Medi-Cal, or other financial help.

You can also get help and information from [*List local agencies and their contact information*]: