

# **Minor guardianship guide**

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When someone wants custody of another person's child, they must get a court order for Minor Guardianship. (This used to be called Non-Parent Custody in Washington.) Learn when and how someone can become a child's legal guardian, rights of parents and children, changing or ending minor guardianship, and alternatives to minor guardianship.

## **1. Fast facts**

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Minor guardianship creates a legal relationship between the children and an adult whom the court appoints to be their guardian. Usually, the children's nonparent caregiver files a guardianship case. But anyone who's interested in the children's welfare can file. You don't have to want to be guardian or want custody of the children for yourself.

**Example:** You're helping your neighbor who is dying. Your neighbor's sister has agreed to take care of the children, but she lives far away and will have trouble getting to court in Washington. You might file a minor guardianship case proposing that the neighbor's sister become the children's guardian.

Whether you're asking that you or someone else be named guardian, you must be able to show the court that each parent agrees to the guardianship, or that there's clear, convincing evidence that no parent can or will take care of the children. This could include situations where the parents have died, or their rights have been terminated. It's not enough just to show that someone else is better at parenting the children or can give them a better home environment.

Once appointed by the court, a guardian may have the same or similar responsibilities as a parent. The guardian can make decisions for the children about their support, care, education, health, safety, and welfare. The guardian can choose to have physical custody of the children (the children live with them most of the time) or choose to let the children live with someone else. The guardian can also apply for public assistance for the children, and for themselves if the children live with them.

In most cases, the children will live with the guardian.

## 2. Types of guardianship

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The type of minor guardianship case you should file depends on how long you need it to last:

- **Regular Minor Guardianship** - long-term guardianship meant to last until the youngest child turns 18. This can include an emergency order for immediate custody.
- **Emergency Minor Guardianship** - short-term guardianship that lasts from **60 to 120 days**. The guardian can ask for it to last longer (ask for an extension) if they also file for regular Minor Guardianship.

**Don't** file for emergency guardianship if you definitely need it to last longer than 60 days. You'll just have to fill out more paperwork.

The procedures for each type of guardianship are a little different from each other. Much of the paperwork is the same. It can be confusing. You should try to talk to a lawyer. This area of law is still new, and the practice is still developing.

Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation.

If there's a safety emergency involving the children, you might be able to get a court order right away in a regular (long-term) guardianship case, if you can prove that an emergency guardian is likely to prevent real harm to the children's safety and no one else can act to prevent the harm. Talk to a lawyer.

### 3. Who can be guardian

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Many minor guardians are grandparents or other close relatives. Guardians are often relatives, but don't have to be.

Generally, the guardian must be at least 21 years old. They must not have criminal convictions involving dishonesty, neglect, use of physical force, or other crimes related to a guardian's responsibilities. The guardian must do a CPS record check.

There are exceptions to this. Depending on the situation, a court could consider a relative qualified to be guardian even if the relative has a conviction. And there are cases where a guardian is over age 18 but still not 21. The judge must find them suitable to be guardian.

Immigrant caregivers can become guardians, regardless of immigration status.

Anyone wanting to be a guardian of minor children must also complete court training (<https://www.courts.wa.gov/guardianportal/index.cfm?fa=guardianportal.title11minor>) .

### 4. Who to notify

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The person who files the guardianship case (the petitioner) must have someone else hand deliver (personally serve) a copy of the petition and other court papers on each parent, any child who is age 12 or older, and anyone who has legal guardianship or court-ordered custody of the children.

Depending on the situation, the petitioner may also have to notify other people about the guardianship case. It can be a long list. You can notify these other people by mail, email, text, or any other way likely to give notice. The other people who should get notice of the guardianship case include:

- Any adult who has primary care and custody of the children now (other than a parent, guardian, or court-ordered custodian — those people must be personally served)
- Any other person who recently had primary care or custody of the children
- Grandparents
- Adult siblings
- Anyone that the parent or child asked to be the guardian

This isn't a complete list. The court forms include an attachment that can help you figure out who to give notice to, which papers, and how.

**Indian children.** If there's any chance that the children could have Native American tribal heritage, the person filing for guardianship **must investigate** those connections **and notify** every tribe the children may be connected to about the guardianship case. There are special forms and rules for notifying Native American tribes.

## 5. Parents' rights

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If you're the parent and you **don't agree** that your children need a guardian, you must act right away to object. You must respond to the case in writing, on time. Look for the "Summons" and the "Notice of Hearing" in the paperwork you were served. The Summons will include the deadline to file a response. The Notice of Hearing explains how to respond.

You should also ask the court to appoint you a lawyer. If a parent who has low income files a response in the guardianship case or comes to a hearing, the court must appoint a lawyer for that parent at public expense if any of these is also true:

- The parent objects to the guardianship
- The parent needs a lawyer to make sure they understand their agreement to the guardianship
- The court finds other reasons that the parent needs a lawyer.

Even if a judge appoints a guardian for the children, the judge can order that the parents still have visitation rights. The judge may also let parents keep other rights, such as access to records or making certain decisions about the children. The guardianship court order will say what rights the parents have.

If you're the parent and you **agree** someone else can care for your children, consider alternatives to guardianship. There are other ways to give someone temporary authority that don't take away

your rights as a parent.

## 6. Children's rights

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An older child needing a guardian can usually take part in the guardianship case. If they're age 12 or older, they can ask for a lawyer. They can even start a guardianship case themselves.

But the judge can decide that the youth shouldn't go to court hearings if that would be harmful to them. Also, the judge can decide that the youth isn't able or mature enough to take part in the case in a meaningful way.

Even if the children aren't living with their parents because of guardianship, the children still have the right to receive support from their parents, unless the parents' parental rights have been terminated. The court can order child support from one or both parents in a guardianship. Or the guardian can ask the Division of Child Support to order support. The person who wants child support for the children must complete child support worksheets and serve the county prosecutor.

## 7. Change or end guardianship or non-parent custody

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People who won custody of someone else's child in Washington **before 2021** got a "Final Non-Parent Custody Order," not a minor guardianship. The change to minor guardianship didn't affect final non-parent custody orders. Non-parent custodians still have legal custody unless a judge changes or ends their non-parent custody order.

A guardian can't just stop being a guardian. The guardian must get a judge's approval to stop being the guardian. A guardian, parent, child who is at least age 12, or anyone interested in the children's welfare can ask a judge to **change or end** a guardianship or nonparent custody order.

The court procedure is the same no matter who uses it.

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**A judge will end (will terminate) the guardianship** if the original reasons for the guardianship no longer exist, **unless** they find that ending the guardianship would be harmful to the children and the children's interest in continuing the guardianship outweighs the parent's interests in ending it.

If guardianship or non-parent custody is terminated, the parents will go back to having the same rights they did before the guardianship or non-parent custody case started. Any order requiring a parent to pay child support to the guardian or non-parent custodian will also end.



**You can ask to change** a guardianship or non-parent custody order to change the parents' visitation (residential schedule), decision-making, access to records, or to replace the guardian with a different person.

If you're changing a non-parent custody order from before 2021, the minor guardianship law now applies and your new order will be a minor guardianship order.

## 8. Alternatives to guardianship

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If you'd rather avoid going to court, you may have other options.

- Mediation can help the parties reach an agreement without having an expensive trial. In mediation, a skilled mediator works with both sides to try to help them come up with their own solution to the problem.
- The parents may agree to sign a Power of Attorney giving someone else temporary authority to care for their children. Then you don't have to file a court case at all. It's easier to start and end Power of Attorney than guardianship.
- Depending on your situation, you may only need to consent to health care on behalf of children in your care. You can sign a declaration that will help with this. This also lets you avoid court.

If the children need a permanent plan, or the non-parent caregiver wants or needs parental rights permanently, and the parents agree that they'll never be able to provide for the children, adoption might make more sense. But adoption requires the parents to consent and can take lots of time and

money.

If Child Protective Services (CPS) is involved and finds that the children have been abused or neglected, they can start a dependency case in court. Once CPS is involved, parents and other caregivers get to have much less say what happens to the children.

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