



Riverside County
Department of Public Social Services
4060 County Circle Drive
Riverside, CA. 92503
(951) 358-3000



A Guide to Legal Guardianship and Adoption

2008



Riverside County
Department of Public Social Services
Susan Loew, Director

TABLE OF CONTENTS

I. DEFINITIONS	1
What is a Legal Guardian?	1
What is Adoption?.....	1
Who May Become an Adoptive Parent or Legal Guardian?	1
How Do You Become an Adoptive Parent or Legal Guardian?	2
Legal Guardianship	2
Adoption	2
What Part of the Child’s Life Does a Legal Guardian Control?	3
What Part of the Child’s Life Does an Adoptive Parent Control?	3
II. MEDICAL CARE	4
What Authority Does a Legal Guardian Have in Pursuit of Medical Care for the Child?	4
When May the Child Obtain Medical Care Without Consent of the Guardian?	4
III. FINANCIAL RESOURCES	5
What Financial Help is Available for a Legal Guardian?	
What Financial Help is Available for Adoptive Parents?	6
IV. FACTS ABOUT GUARDIANSHIP AND ADOPTION OF DEPENDENT CHILDREN OF JUVENILE COURT	7
Rights of Guardians and Adoptive Parents	7
Rights of Children	7
V. TERMINATION OF GUARDIANSHIP	8
May a Legal Guardian Terminate the Guardianship? ..	8
Are There Other Means of Terminating a Guardianship?	8
What Happens if the Guardianship is Terminated?	8
COMPARISON TABLES	9-12

ISSUE	ADOPTION	GUARDIANSHIP
Background Study Conducted	Licensed Adoption Agency conducts a home study, including medical evaluation, references, criminal record check, birth, marriage and divorce verification.	Study done by County Social Services Agency, including criminal record clearance and prior referrals for child abuse or neglect, motivation for seeking guardianship instead of adoption, long-term commitment to child, plans for continued involvement with birth parents, etc. The Juvenile Court hears and rules on study's findings.
Costs to Initiate	Court fees to file petition to adopt (currently \$19.00); attorney fees, if used to file petition or can represent selves with assistance from Adoptions social worker. Doctor's fees for medical evaluations, if not covered by insurance. Agency adoption fee of \$500 may be reduced or waived if payment would create a hardship for the family if child has special needs. Families also receive reimbursement for adoption fees once the adoption is finalized.	None, if child is a dependent of the Juvenile Court and the court has ordered the guardianship as the best permanent plan for the child.
If it doesn't Work Out	If the adoption has not been finalized, agency would resume care. After finalizations, agency will work with the family, but may not assume care.	The guardian parent, child (age 14 or older), or any interested party may petition the court to terminate the guardianship and the child would become a dependent again. Legal fees for termination of guardianship in most cases would be at the guardian's expense.

ISSUE	ADOPTION	GUARDIANSHIP
Right to Determine Place of Residence	May move anywhere. The county of the child's origin remains responsible for Adoption Assistance Program benefits.	May move anywhere in California. Must obtain court approval to establish residency outside California. Guardianship and eligibility to AFDC-FC or Kin-GAP payments may not be recognized in another state. Guardians moving out of state will need to re-petition the court in that state for letters of guardianship at their own expense.
Ability to Adopt a Child Who is Placed as a Guardian Child	Not applicable.	Upon the legal guardian notifying the Adoptions Unit of intent to adopt, the Permanency Planning social worker shall file a W&IC 388 (JV 180) Modification Petition; The 388 petition requests that dependency be reinstated in conjunction with a request to upgrade the legal guardianship to Adoption.
Right to Consent to Adoption	Same as birth parents.	No rights.
Right to Name Another Guardian	Can extend their right of natural guardianship through the provision of a testamentary guardian.	A legal guardian cannot delegate their guardianship to another.
Older Child's Rights	At age 10 or above, must consent to the adoption.	At age 10 or above, the court must consider the child's wishes regarding guardianship. A child (14 years or older) may ask the court to change the guardian.

THINKING ABOUT BECOMING AN ADOPTIVE PARENT OR A LEGAL GUARDIAN?

If you are a foster parent or relative caretaker of a dependent child, and the Juvenile Court determines the child cannot be returned to his or her parents, you may start considering whether you wish to become a permanent part of the child's life. If so, here are some questions to ask yourself:

- Am I committed to making this child my own?
- Is my family prepared to share family resources with another child: college savings, vacations, bedroom space?
- Do I want to be a grandparent to this child's children?
- Will all family members feel comfortable about giving this child an equal share of any family inheritance?
- Do I love this child for better or worse? Can I live with surprises that a closer relationship might bring, such as revelations of past sexual abuse or more acting out behavior, and if so, am I committed to working through these issues and behaviors?
- Do I want the agency to stay involved in case this child has educational or behavioral problems as a teenager?

Note: there are post-adoption services available.

- Am I thinking of adoption or obtaining guardianship because:
 - it would be too painful to let the child leave?
 - no one else would want this child?
 - things are not so great with my spouse and I need someone to make me feel good?
 - because other people will think I'm terrible if I do not?
- How will I handle the birth parent or child's siblings showing up on my doorstep?

Note: adoptive families' addresses are kept confidential.

- How will things be after the adoption/guardianship? Will things be better? How? Do I expect someone else's behavior to change?
- What will my life situation be in 5, 10, or 15 years and how will this child fit into it? How will I feel if I lose my spouse unexpectedly or my health fails?

Both adoption and guardianship should be based on a well thought out commitment. Think about all these issues. Consult an agency social worker if you have any questions about the facts or personal concerns, or about what is best for your family and the child. If you do not feel comfortable discussing personal concerns with the agency before you make decisions, ask if the agency can refer you for a consultation with a professional counselor well versed in permanency planning for children.

I. DEFINITIONS

WHAT IS A LEGAL GUARDIAN?

A “Legal Guardian” is a person lawfully vested with the power and charged with the duty of providing the care and management of a minor child (child under age 18); a person appointed by the superior court pursuant to the provisions of Probate Code Section 1514, or appointed by the juvenile court pursuant to the provisions of Welfare and Institutions Code Section 366.25 or .26.

The Riverside County Juvenile Court appoints relative or non-related legal guardians for dependent children. The Probate Court appoints legal guardians for non-dependent children. Once a legal guardianship is established, the child is referred to as a “ward” of the court.

Note: For simplification purposes the word “child” will be used in place of the word “ward” for the majority of this guide.

WHAT IS ADOPTION?

- Adoption is a legal process which transfers parental rights from birth parents to adoptive parents permanently. Adoption means taking a child into your home as a permanent family member as well as caring for and guiding children through their growing years and giving them the love and understanding they need to develop to their full potential.

WHO MAY BECOME AN ADOPTIVE PARENT OR LEGAL GUARDIAN?

A legal guardian may be:

- Relatives
- Non-related adults

Single people can make excellent adoptive parents or guardians and provide the attention and nurturing children need. Age requirements are flexible as long as your health, energy, and desire are appropriate for placement.

Adoptive parents or guardians may reside in rented/leased properties and are not required to own their homes. Both parents may be working outside the home and still be adoptive parents or guardians. A large income is not a criterion for placement. Adoptive parents or guardians need only an income sufficient for basic family needs. The Adoption Assistance Program can provide monthly payments and medical coverage for many of California’s adopted children. Relative Legal Guardians may receive CalWORKs and non-related legal guardians may receive foster care benefits and medical coverage to assist in providing for the care of the child.

ISSUE	ADOPTION	GUARDIANSHIP
Effect on the Child’s Birth Certificate	The birth certificate is amended to identify the adoptive parents as the parents and to change the child’s name.	No effect. Retains the birth family name.
Religion and/or Religious Education	Adoptive parent determines.	Pursuant to Probate Code, the guardian has the same rights and responsibilities as birth parent. Guardians are encouraged to continue with the child’s original (if any) religious preference.
Consent for Medical Care	Same rights as birth parents.	Child is under the age of 14: guardian has same rights as birth parents to give consent to medical treatment and to require the child to receive medical treatment. Child is 14 years of age and older: Surgery may not be performed without either the consent of the guardian <u>and</u> the child or a court order obtained through the Juvenile Court.
Liability	Same as birth parents.	Jointly and severally liable with the child for damage resulting from the child’s acts of willful misconduct which result in bodily injury or property damage to a maximum amount proscribed in the law.
Right to Child’s Earnings	May control earnings.	Not entitled to child’s earnings. Guardians appointed through Juvenile Court are appointed as guardians of the person only, not the estate.

ISSUE	ADOPTION	GUARDIANSHIP
Custody	The birth parents' rights are ended and the adoptive parents have full custody.	The birth parents remain as legal parents to the child, although the guardian acts in their stead.
Financial Obligation	The adoptive parents are responsible for the support of the child. Adoption Assistance Program benefits may be available. If the child receives AAP and has special needs a Specialized Care increment may be available.	Non-related guardian may obtain Foster Care benefits for the child. To be eligible, <u>non-related</u> guardians must agree to have the child supervised by the DPSS and visited by a social worker at least once every six months. Relative guardians may receive CalWORKs, or Kinship Guardianship Assistance Payment (Kin-GAP). (If the guardianship was established through the Juvenile Court, the child may be eligible for Kin-GAP after dependency is terminated and the child has been in placement for 12 months or more. If the child receives Supplemental Social Security (SSI) he/she is ineligible to receive CalWORKS or KinGAP).
Supportive Services	The adoptive parents may request post-adoptive services from the agency.	Non-related guardians are required to see a social worker at least every six months to continue their eligibility for AFDC-FC.
Visitation by Birth Parents	No right to visit; any visitation after the adoption is at the discretion of the adoptive parents.	Have the right to visit unless the court has made a finding the visitation would be detrimental to the physical or emotional well-being of the child.
Dependency Status	Juvenile Court terminates the dependency upon the granting of the petition to adopt.	Juvenile Court dependency can be maintained but usually is not. The Juvenile Court retains jurisdiction to change, modify, or terminate the guardianship.

HOW DO YOU BECOME AN ADOPTIVE PARENT OR LEGAL GUARDIAN?

- When the Juvenile Court has assumed care and custody of a child and the he/she has been placed in your home by the Department of Public Social Services (DPSS), you will be asked if you would consider becoming the child's adoptive parent or legal guardian if reunification efforts with the child's parents fail.
Note: A "concurrent plan", which is an alternate plan created in case the initial plan does not succeed, will include your response to this question at the beginning of the placement as a course of providing the most comprehensive plan for the child.
- At a permanency planning hearing in the Juvenile Court, the Judicial Officer may:
 - terminate parental rights if prospective adoptive parents have been identified and rights if the birth parent has failed to, or
 - authorize County Counsel to file a petition for guardianship.

LEGAL GUARDIANSHIP:

- County Counsel will mail guardian papers and request that you sign the guardianship papers. An envelope will be provided and these papers must be returned to the County Counsel's Office. Counsel will file these papers in the Juvenile Court and the social worker will notify you of a hearing to establish the guardianship in the Juvenile Court.
- You may also file in the Superior Court for appointment as legal guardian of a child by employing a private attorney to do so, or by filing in Pro Persona, i.e., acting as your own attorney. If the child is a ward of the Juvenile Court, this should not be pursued without first informing the Social Worker and the Juvenile Court. If the child has been placed with you voluntarily by the parent, either through the DPSS or as a private placement, the consent and cooperation of the birth parent should be sought.

ADOPTION:

- If it is determined that the child will not be able to reunify with his/her parents, and you have expressed an interest and willingness to adopt, you will be directed to complete an application to adopt. Based on that application, an Adoption Social Worker will conduct interviews with you and your family and will subsequently complete an adoptive home study.

When your home study has been completed and approved, parental rights have been terminated, and all agency paperwork has been completed, a hearing will be scheduled to finalize the adoption.

WHAT PART OF A CHILD'S LIFE DOES A LEGAL GUARDIAN CONTROL?

- A legal guardian has the right to determine the residence of the child within the state which granted guardianship. The guardian must obtain approval from the court that ordered the guardianship prior to moving out of the state.
- A legal guardian has the right to make decisions regarding the child's education, sports participation, and driver education and other major life decisions involving the child.
- The court may include, in the order of appointment special conditions for care, treatment, education and welfare of the child. [Probate Code Section 2358]
- If the guardianship is granted, as a result of dependency, the DPSS will usually recommend to the Juvenile Court that the dependency be terminated. If the court agrees and the dependency is terminated, the child's status will change from dependent to ward. The legal guardian may determine the conditions of visitation between the child and the child's parents or other relatives unless the court which granted guardianship has made specific orders concerning visitation.

WHAT PART OF A CHILD'S LIFE DOES AN ADOPTIVE PARENT CONTROL?

An adoptive parent:

- has the right to determine the residence of a child anywhere in, or out, of the state where the adoption was finalized.
- has the same rights as birth parents to determine the child's education, sports participation, religious education, employment, consent to drive, etc.
- Visitation with the child's biological family is at the sole discretion of the adoptive parents.

II. MEDICAL CARE

WHAT AUTHORITY DOES A LEGAL GUARDIAN HAVE IN PURSUIT OF MEDICAL CARE FOR THE CHILD?

V. TERMINATION OF GUARDIANSHIP

MAY A LEGAL GUARDIAN TERMINATE THE GUARDIANSHIP?

- A legal guardian shall be allowed by the court to resign when it appears to be proper.

Note: The guardian may file a petition at any time to terminate the guardianship.

ARE THERE OTHER MEANS OF TERMINATING A GUARDIANSHIP?

- Legal guardianship terminates when the child attains majority (18 years of age), marries, or dies.
- Legal Guardianship may also be terminated by petition of the guardian, the parent or the child, if the court determines that guardianship is no longer necessary or that it is in the child's best interest to terminate the guardianship.
- The legal guardian may be removed by the petition of the child, a relative, or friend of the child, or any interested person for any several reasons enumerated in Probate Code Section 2650.

WHAT HAPPENS IF THE GUARDIANSHIP IS TERMINATED?

- If the guardianship terminates as a result of the marriage, death or majority status of the child, the child is considered emancipated.
- The death of the child terminates the guardianship. The termination of guardianship will result in the termination of AFDC-FC.
- If the child is still considered a minor and a dependency was terminated as a result of the guardianship, the Juvenile Court may vacate its order terminating dependency and set a new hearing for the child.
- If the child is still considered a minor and no dependency is put into effect in the Juvenile Court, the child's custody reverts to the parent or other person(s) having legal custody

IV. FACTS ABOUT GUARDIANSHIP AND ADOPTION OF DEPENDENT CHILDREN OF JUVENILE COURT

RIGHTS OF GUARDIANS AND ADOPTIVE PARENTS:

- Guardians and adoptive parents have the right to make decisions on behalf a child's education and employment; they may give permission for marriage and entry into the armed forces; they have the right to represent the child in legal actions; they may give consent for the child to drive, providing they are willing to accept the financial responsibility for any civil damages incurred by the child while driving.
- On other issues, the rights of adoptive parents and guardians differ. The chart located on pages 9-12 describes these differences. Laws and regulations differ from state to state and policies may differ from county to county. Be sure to check with your county, state or attorney to verify the information presented.

RIGHTS OF CHILDREN:

- An adopted or birth child has the right to inherit from his parents' estate and receive Social Security and Veteran's benefits from their account. He/she has no right to inherit from his guardian unless specifically included by name in the guardian's will.
- An adopted child is entitled to continue receiving Social Security and Veteran's benefits from his biological parents after his placement and adoption.
- An adopted child is not entitled to inherit from his biological family unless specifically included by name in the relative's will.

- The legal guardian has the same right as the parent to give consent to medical treatment performed upon the child and to require the child to receive medical treatment. However, if the child is 14 years or older, no surgery can be performed upon him or her without either: 1) consent of both the child and guardian, or 2) a Court Order which is obtained pursuant to Probate Code Section 2353(b) when the guardian determines, in good faith based upon medical advice, that the case is an emergency and without the surgery the child faces loss of life or serious bodily injury. [Probate Code 235(c)]. However, if the child is 14 years or older, except when the guardian determines in good faith based upon medical advice that there is a medical emergency and without the necessary surgery the child faces loss of life or serious bodily injury, no surgery can be performed on the child without either 1) consent of both the child and guardian or 2) a Court Order obtained pursuant to Probate Code section 2357 authorizing the necessary surgery. [Probate Code section 2353]
- The child may be involuntarily committed to a mental facility only under the provisions of W&IC 5150, et seq., 5350, et. seq., or 6000 [Probate Code 2356(a)]
- An experimental drug may be prescribed and administered to a child only under the provisions of Health and Safety Code 26668, et seq. [Probate Code 2356(c)] sections 11515, et seq. [Probate Code section 2356(b)]
- Convulsive treatment may be performed on a child only under the provisions of W&IC 5325, et. seq. [Probate Code 2356(d)] sections 5325 et seq. [Probate Code section 2356(d)]
- A child may not be sterilized under the provisions of this division of the Probate Code. [Probate Code 2356(d)]

WHEN MAY THE CHILD OBTAIN MEDICAL CARE WITHOUT THE CONSENT OF THE GUARDIAN?

The consent of the guardian is not required for any medical or surgical treatment for the child in any case where the child alone may consent to such treatment pursuant to other provisions of law [Probate Code 2353 (d)], e.g.:

- A. Blood donations by a minor [Civil Code 25.5] 17 years and older [Health & Safety Code section 1607.5]
- B. Child minor on active duty with armed forces [Civil Code 25.7] is emancipated and may give medical consent for his or her medical care [Family Code section 6924]
- C. An unmarried family child may give consent to the furnishing of hospital, medical and surgical care related to the prevention and treatment of pregnancy. [Civil Code 34.5] In addition, a child may give consent for the provision of mental health services. [Family Code section 4. 6924]

III. FINANCIAL RESOURCES

WHAT FINANCIAL HELP IS AVAILABLE FOR A LEGAL GUARDIAN?

- If the child has been receiving Aid for Dependent Children-Foster Care Program (AFDC-FC), and the child's non-related caregiver becomes a legal guardian, the child will continue to receive AFDC-FC payments with the guardian as payee. If the guardian was the direct payee of the child's AFDC-FC prior to guardianship, the rate will stay the same, although it may change at the annual renewal based on the child's current circumstances. If the guardian was the child's Foster Family Agency (FFA) certified foster parent prior to guardianship, the rate will change from the FFA rate to the basic foster care age-rate.
- If the child was not receiving AFDC-FC prior to guardianship, the non-related guardian may apply for AFDC-FC on the child's behalf.
- Legal guardians must cooperate with the social worker to complete a home visit at six months intervals, and with the eligibility worker to complete an annual renewal of the AFDC-FC Application.
- If a relative foster parent has been receiving AFDC-FC for the child, AFDC-FC will cease when the guardianship is established and dependency terminated. The relative guardian is entitled to a full written disclosure of the consequences of the change in the custodial status before the change occurs. This is done by presenting the relative with a form SOC 369 which must be read and signed. The original copy will be maintained in the child's case record.
- A relative guardian, who has been receiving California Work Opportunity and Responsibility to Kids (CalWORKS) on behalf of the child, may continue to receive such benefits. The child may be eligible for a transfer to Kin-GAP, after dependency is terminated and the child has been in placement with the relative for 12 consecutive months.
- Kin-GAP is an assistance program for children in relative guardianship; with similar rates to AFDC-FC.
- If the child is eligible to or currently receiving income such as Social Security (SS), Supplemental Security Income (SSI), Veteran's dependents benefits or private resources, the legal guardian may be eligible to become payee for any of these sources of income. They may also affect the child's eligibility to AFDC-FC, Kin-GAP, or Cal-WORKs .
- If the child is eligible for AFDC-FC, Kin-GAP, Cal-WORKs or SSI the child will also receive Medi-Cal. If the child is not receiving one of these benefits, they may be eligible to receive Medi-Cal *only*. The guardian may apply for Medi-Cal *only* in their local welfare office. In addition some insurance companies allow a guardian to include his/her child on their medical insurance policy.
- California Chafee Grant for Foster Youth To qualify, you must be a current or former foster youth and not have reached your 22nd birthday as of July 1 of the award year. The court must have established your dependency when you were between the ages of 16 and 18.

III. FINANCIAL RESOURCES, continued

- Former Foster Care Children (FFCC) A child must be in foster care under the responsibility of the state on his or her 18th birthday. Coverage continues automatically until age 21. Children who leave foster care before age 18 are not eligible.

Note: a non-related legal guardian can apply for Medi-Cal on behalf of a child, which will not link the guardian to the Medi-Cal program; but if the child is 14 years of age or older, they can apply for their own.

- Non-related legal guardians need to be aware that most other states do not offer care or Kin-GAP funding to legal guardians. Once the legal guardian removes the child from the State of California. Foster care/Kin-GAP payments from California are no longer available. CalWORKS benefits are available only to California residents. Guardians who are considering moving to another state should contact the new state to explore the available programs. SSI benefits may be transferred by contacting the Social security Administration.

WHAT FINANCIAL HELP IS AVAILABLE FOR ADOPTIVE PARENTS?

- Adoptive parents, like birth parents, have a legal responsibility to support their child financially. However, there is financial assistance available dependent upon specific situational criteria.
- In determining the family's eligibility for Adoption Assistance Program (AAP) benefits, the Adoption Social Worker will consider the identified needs of the child, the birth parent history, and abuse/neglect history of the child. They will also consider:
 - age
 - whether the child is being adopted as a member of a sibling group
 - ethnicity
 - mental and/or physical health problems

Note: Title 45 Code of Federal regulations (CFR) statute 1356.40 (c) states: "There must be no income eligibility requirement (means test) for the prospective adoptive parent(s) in determining eligibility for adoption assistance payments. But the child's income **will** be taken into consideration regarding eligibility for AAP benefits.

- Specialized Care Increments may be provided based on the child's needs and assessments by treating professionals:
 - If the child has a need for residential treatment, AAP can be applied toward placement and cover the cost.
 - Medi-Cal continued to age 18, AAP/Medi-cal can continue to age 21 if the child has extraordinary needs.