



Bridging Refugee Youth & Children's Services

Guardianship Fact Sheet For Staff Assisting Refugee Families

This fact sheet provides basic background information for those assisting refugee families to understand and/or establish guardianship for non-biological children (such as grandchildren, nieces, nephews, cousins, siblings, or friends). These children have sometimes been referred to as “guardianship cases” (meaning an adult caregiver serves as the child’s guardian since the child’s parent cannot), or “attached minors” (meaning they are attached to an adult other than their parents). Increasingly, they are being referred to as “**separated children**” (meaning they are separated from their parents). In this document we will use the term “separated children,” since this is the internationally recognized description of these children. Separated children are among the most vulnerable of refugee children, since their parents are not present to provide protection and care.

This information is intended for use by agencies which assist in the resettlement of separated children, as well as other service providers, such as Mutual Assistance Associations, which may assist separated children and their caregivers after their initial period of resettlement services has ended. It may also be of use to State Coordinators of Refugee Resettlement and others who are responsible for planning assistance to refugee families in their jurisdictions.

► *What is guardianship?*

Guardianship refers to the court process of giving legal responsibility for the care of a child to an adult who is not the parent of the child (a child or minor is defined as someone under age 18). This allows the guardian to make important decisions for a child that a parent would usually make (such as medical treatment and decisions about schooling). This process is intended to protect children and ensure that a responsible adult is looking after them. The main consideration in this process is what is in the best interest of the child.

In the U.S., child welfare regulations are made at the state level, or at the county level within each state. **The process of getting legal responsibility for a child will vary from state to state, or even from county to county within a state. While the term “guardianship” is the most common word, different terms may be used, such as: legal custody, temporary or limited guardianship, wardship, etc.**

► *Why is guardianship important?*

Guardianship is important for two main reasons. First, guardianship is a protection for refugee children resettled without their parents. In the U.S., a parent has the right to make decisions about a child. **In order for the government to recognize that a non-parental adult may make important decisions for a child, that adult must have this legal responsibility recognized by a court of law.**

A joint project of



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Secondly, because separated children are at high risk, **the U.S. Department of State (DOS) requires all refugee resettlement agencies to explain local guardianship laws and procedures to anchor relatives in the U.S. or newly arriving refugee families who will be caring for a separated child.**

► ***Why are the cases of separated children treated differently?***

These cases involve refugee children who have been separated from their biological parents, whether by death, war or flight. **These cases are treated with more care because these children can be more vulnerable to abuse, neglect, abandonment, or to having their needs overlooked.**

While most relatives provide loving care to such children, some relatives may be unable or unwilling to care for a separated child as though the child were their own. In some families, the pressures of adjusting to a new country can make providing for a separated child feel like a burden. Sometimes this leads to **abuse** (such as giving a separated child more household chores, harsh physical punishment, or sexual abuse), **neglect** (such as not allowing a child to attend school, or not providing a child with enough food, clothes, or emotional support), or even **abandonment** (such as telling an adolescent child to move out of the home, or moving away and leaving a youth to care for him/herself).

While every case is different, **children in the following situations sometimes face greater risks:**

- if the relationship to the adult is distant, or if the relationship is by marriage rather than blood;
- if the child has not been living with the guardian prior to resettlement and must now get used to a new parental figure;
- if the youth (more likely an adolescent) has had a high degree of independence prior to resettlement, and then must adjust to living with a new guardian;
- adolescents in general can face more tension with adult guardians, as they begin to seek more independence while their guardians may seek more control over the youths' behavior.

► ***What are the benefits and responsibilities of guardianship?***

Oftentimes, people do not think of establishing guardianship until some type of crisis or problem arises. However, **guardianship can be necessary in the following common situations:**

- medical decisions regarding immunizations, surgery, hospitalization, or other health care, or getting copies of a child's medical records;
- school-related decisions, such as school enrollment, participating in field trips or sports activities, enrolling a child in special educational programs, or getting copies of school records;
- adding a non-biological child to an adult's health insurance coverage;
- accessing certain public benefits, such as public housing, or financial assistance available to children without parents;
- getting a driver's license for a teenager cared for by a guardian.

Establishing guardianship allows a family to secure a **legal document** which clearly identifies the guardian as having the right to make important decisions on behalf of a child in the guardian's care. **Receiving guardianship can also add a sense of security and stability to the family relationship:** it reminds the adult guardian that caring for this child is a serious responsibility, and it reminds the child that this adult relative has the authority of a parent.

In some states, children without parents may also be eligible for financial or other social service supports. These programs may be called "child-only grants," "subsidized guardianship" or "kinship care." The rules and availability will vary from state to state. Child-only grants may depend solely on the child's lack of parents, rather than on the adult relative's income, while subsidized guardianship and kinship care arrangements may require more involvement by the local child welfare authority. For some families, this kind of help may be the only way the family can continue to provide for an additional child.

The responsibilities of guardianship generally include providing for a child's health, education, nutrition, clothing, shelter and protection needs. Guardians could be responsible to others for delinquent acts by a child (such as breaking a window). The guardian is also responsible to remain in contact with the court and follow court instructions, or the guardian could face certain penalties.

► ***How is guardianship different from adoption?***

Guardianship is not the same as adoption. **It allows the guardian to make the decisions that a parent would usually make. It suspends the parents' rights, but it does not permanently end them.** Adoption, by contrast, permanently terminates the biological parents' rights towards the child. If a child in a guardianship arrangement were able to reunite with his/her parents, guardianship could be ended and the child returned to the care of the parents, if that would be best for the child.

► ***Who can be a guardian?***

Guardians are most often a blood relative to a child, but sometimes guardians are unrelated adults who care about the well being of a child. Some states have age requirements for guardians (for example that a guardian must be at least 21 years of age). **Guardians must be able to assure the court that they can provide for the basic needs of a child (such as food, clothes, shelter, education, medical care, safety).** Some places may require a guardian to go through a criminal background check, to ensure that guardians do not have a history of child abuse or other violent behavior.

► ***What does the guardianship process include?***

This process will be different in each state, and in some places it will be called something other than guardianship. However, the process often requires the following steps:

- The family files a "**petition**" (or request) with the appropriate court. In some

states older youths may file the petition themselves, rather than the proposed guardian. The family may need a lawyer to help with this process.

- The family may pay a **fee** to the court. In many places, low-income families can apply to be exempt from this fee.
- The court may require that a “**home study**” be completed, meaning that a government representative visits the refugee’s home; **or** the court may require a “**guardianship plan**” to show that the adult is planning for the child’s needs.
- The family may need to attend a **court hearing** with a judge.
- The court may require the family to **report back to the court** on the child’s well being once a year, or once every 6 months.

It is also important to understand that the guardianship forms signed at a resettlement office by refugees or anchor relatives only explain the process for establishing legal responsibility. Signing these forms does not actually give the adult relative guardianship. **Legal guardianship can only be granted by the appropriate court, NOT by signing a form at a refugee resettlement office.**

► ***What if a refugee family moves to another county or to another state?***

Once guardianship is established, the guardian should notify the court anytime the family changes address. If the family moves to a different county or a different state, the guardian will probably need to request a “change of venue.” This means the guardian asks for the case to be transferred to the appropriate court closest to the family’s new address. An attorney may be helpful with this process.

► ***When does guardianship end?***

The responsibilities of a guardian generally end, in a legal sense, when the child reaches 18 years of age, marries, or is adopted. Guardianship can also be terminated through the court by the guardian, the child, the parent, or a court representative. In some places, guardianship will not automatically end at age 18, so the guardian will need to ask the court to terminate the guardianship arrangement.

► ***What if the accompanying relative does not want to become the child’s guardian?***

In some situations, adult relatives arriving with a refugee child have been unwilling or unable to take on the responsibilities of guardianship. Sometimes this refusal is active (where the relative just says no), and sometimes this is passive (the relative does not follow through on any of the guardianship procedures or expectations). In a few situations, children themselves have expressed concern about a particular adult serving as their guardian.

If any of these situations arise, try to determine the concerns of the guardian or the child. If the guardianship process intimidates the adult relative, try to help them overcome the barriers (such as transportation, fees, legal help, time constraints, etc). **If the adult relative lacks a commitment to caring for the child, or if the child does**

not feel safe with the adult relative, this is more serious and requires immediate follow-up. Talk with the family or the child about whether there are any other relatives in the U.S. who are better suited to caring for the child. Consult with your national office. If the child already has community or family ties in the area, you might consider referring the child to your local child welfare agency for foster care. Your State Refugee Coordinator may be a resource in these situations as well. If these are not viable options, the child can also be referred to one of the specialized refugee foster care programs for refugee children who do not have caregivers in the U.S.

In any of these situations, **the most important consideration is what is in the child's best interest.** Children's Services staff of USCCB and LIRS can be useful resources in discussing these options and can be reached as follows:

LIRS Children's Services
410/230-2757
childrenservices@lirs.org

Children's Services, USCCB
202/541-3114
nlummert@usccb.org

► ***How can I explain the role of the "court" in the U.S.?***

In the U.S., there are many different court systems. In some sense, the court systems in the U.S. function like "elders"—they mediate or make decisions between people or groups, and they provide guidance. Some court systems are run by the federal government and some are run by state or county governments. **Guardianship proceedings will take place in either a state or county court, and the name of the court system will vary from place to place.** The court system handling guardianship issues will most commonly be called Probate Court, but other possible names include: Circuit Court, State Supreme Court, Superior Court, County Court, or Family Court.

Some refugees may be intimidated by the idea of going to court. For some refugees, "court" was only a place for criminals. For other refugees, "court" is a reminder of corrupt government systems. Refugees who are used to traditional practices in their own country may think it unnecessary to go to court to establish guardianship, since some countries automatically assume that the closest relative becomes the guardian when a child's parents die. Some relatives may also fear that going to court in the U.S. will remove authority for a separated child in their care. In fact, establishing legal guardianship will strengthen the relative's authority by legally recognizing it.

► ***What is the "Best Interest of the Child"?***

The fundamental child welfare principle is that decisions about a child are based on the child's best interests. This means **the person, court, or agency making decisions about a child should be most concerned about the child's needs, rather than an adult's needs or the government's needs.** This includes consideration of the child's immediate and long-term needs in any decision about the child. This concept is sometimes described as mentally putting oneself in the child's "shoes" to decide what the child would want for his or her future. Where possible, children should be involved in decision-making about what will happen to them.

► ***Suggestions for improving services to separated children and their families***

- If your office has not already done this, have a staff person walk through the guardianship process with a family so that your office can better explain the process to future clients. Determine your state's general guardianship procedures before resettling such a case.
- Consider having one or two caseworkers handle all separated children's cases, so that certain staff develop expertise in the procedures and issues associated with these cases.
- If your agency has a foster care or child welfare department, find out what they know about guardianship and custody procedures in your area.
- If the refugee family has relatives who have lived in the U.S. for a while, seek their support in encouraging the newly-arrived family to pursue guardianship. Sometimes relatives who have lived in the U.S. for a longer period have a better understanding of why this legal process is important.
- If a family cannot document the death or current location of the child's parents, include with the guardianship application a typed description of the family's explanation of what happened to the child's parents (such as why they cannot care for the child, and how this relative became the child's caretaker). This information should be part of a standard case management interview conducted with the family shortly after arrival. In some situations, it may be helpful to talk with an older youth individually, in case the youth has concerns about living with the proposed guardian.
- Look at your state governmental website to see if guardianship laws and forms are available over the Internet (these can be found at: [www.state.\[2-letter state abbreviation\].us](http://www.state.[2-letter state abbreviation].us), for example www.state.mn.us for Minnesota).
- Talk with your State Refugee Coordinator's office and other local refugee serving agencies about procedures and issues relevant to guardianship cases, to share knowledge and resources, and to ensure that everyone is using accurate language and procedures. If refugee families are not pursuing guardianship in your community, try to determine what the barriers are. Ask your State Refugee Coordinator to help arrange for a government official to come and answer questions about guardianship. Include local Mutual Assistance Associations (MAAs) and other refugee-serving agencies in these discussions, since they may be helpful to families with guardianship issues following the initial three months of services provided by resettlement agencies.¹

¹ U.S. Dept. of State cooperative agreements with the voluntary agencies state that the information provided to families regarding guardianship should be "provided or approved by the state..." In addition, copies of the 90-day follow up report should be shared with the appropriate State Refugee Coordinator's office, "so that further action may be taken by the state if the state deems it necessary."

- Check with your state Social Services (or Human Services) department about whether children in guardianship arrangements are eligible for additional financial or social service supports. These programs are sometimes called “child-only grants,” “subsidized guardianship,” or “kinship care.” (For example, guardianship children in New Hampshire are eligible for a child-only grant under the state’s “relative payee program,” to assist relatives in caring for such children.)

► ***Additional resources (also used in compiling this document):***

- “Reasonable Efforts to Finalize a Permanency Plan for Legal Guardianship” by Jennifer Renne; Child Law Practice Newsletter of the American Bar Association (ABA), November 2001 (Vol 20, No. 9). *(Copies of this article can be obtained by calling 202/662-1743 or e-mailing: waxlerl@staff.abanet.org.)*
- The website of The National College of Probate Judges, in collaboration with the National Guardianship Association, includes links to the guardianship laws of each state: http://www.ncpj.org/state_laws.htm. *(Be aware that in most states the guardianship laws can apply to children as well as incapacitated adults. Check to see if there are separate sections of law covering children rather than adults.)*
- Guardianship: “Another Place Called Home”, Houston, TX: Cornerstone Consulting Group, 2001.

Acknowledgements: BRYCS staff would like to thank Susan Schmidt for her hard work on this project, as well as the many organizations and individuals who contributed to it.

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BRYCS is supported by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, under contract # 90 RB 0009.

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Gshpfact.pdf Rev. (CE) 02-20-2003