



Bridging Refugee Youth & Children's Services

Guardianship Fact Sheet

For Staff Assisting Refugee Families

This fact sheet provides basic information for helping refugee families to understand and establish "legal guardianship" when caring for the children of relatives (such as grandchildren, nieces, nephews, cousins, siblings) or friends. These children may be referred to by any of the following terms:

- **Guardianship cases**
- **Attached refugee minors**
- **Children coming to join "anchor relatives"**
- **Separated Children**
- **Kinship placements, or children with relative caregivers**
- **M-2, M-3 or M-6 resettlement cases**

What is legal guardianship?

Establishing "guardianship" refers to a court process in which legal responsibility for the care of a child (under age 18) is given to an adult who is not the parent. This ensures that children without parents have another adult who is responsible to care for them and to make important decisions about them (such as medical care and school decisions).

These procedures vary by state; in about ten states they also vary by county. The process is usually called guardianship, but it may also be called custody or something else.

In some states, the term "guardianship" is only used when referring to incapacitated adults (that is, someone over age 18 who needs another adult to handle decision-making due to a physical or mental disability), and a different term is used in relation to children. Furthermore, there are a few states where both guardianship and custody are options, depending on the family's situation. Please refer to BRYCS' publication **Guardianship Information by State** for information on which procedure is most appropriate in your state.

Why is guardianship important?

Establishing guardianship protects refugee children who are in the U.S. without their parents, by making sure that another adult is responsible for their needs. In addition, the U.S. Department of State requires all refugee resettlement agencies to explain local guardianship laws and procedures to refugee families caring for a relative's child. However, legal guardianship can only be granted by an appropriate court, and not by signing a form in a refugee resettlement office.

What are the responsibilities of guardianship?

Guardians are generally expected to provide for the following needs of a child:

- **Health and medical care**
- **Schooling**
- **Food**
- **Clothes**
- **Housing**
- **Safety**

Legal guardians may be expected to report back to the court every 6 months, or once a year. Resettlement agencies, or attorneys who assist refugee families to establish guardianship, can be helpful in reminding guardianship families about this.

What are the benefits of guardianship?

Guardianship allows a non-parental adult to make important decisions about a child, such as the following.

- **Medical:** Making decisions about immunizations, surgery, hospitalization, or other health care, or getting copies of a child's medical records.
- **School:** Making decisions about school enrollment, participating in field trips or sports activities, enrolling a child in special educational programs, or getting copies of school records.
- **Health Insurance:** Adding a non-biological child to an adult's health insurance coverage.
- **Public Benefits:** Accessing certain public benefits, such as public housing, or financial assistance available to children without parents.
- **Driver's License:** Getting a driver's license for a teen-ager cared for by a guardian.

In some states, children without parents are eligible for special financial or social service supports (sometimes called subsidized guardianship payments, or child-only grants.)



What does the guardianship process include, and where do I go?

The typical process may include the following steps:

- Filing a **petition** with the appropriate court (which may be called probate, juvenile, family, district, superior, circuit, surrogate's court, etc.)
- Paying a filing **fee** to the court (often \$100 - \$200), or filing a **fee waiver** request for low-income families.
- Completion of a home visit, a **home study**, or a guardianship plan for the court.
- Attending a court **hearing** with a judge.
- Periodically **reporting** back to the court (every 6 months, or annually).

It may be helpful to show the court copies of resettlement forms regarding the child, if available, such as the Best Interest Determination, the Suitability Assessment completed by the resettlement agency, or the Statement of Responsibility form signed by the relatives.

Generally speaking, guardianship cases are handled by probate court, while custody cases are handled by family court or juvenile court. Refer to BRYCS' publication **Guardianship Information by State** for information on which court is most appropriate in your state.

Is a lawyer required?

Lawyers are generally recommended, but sometimes these procedures can be handled "*pro se*" (self-represented). Some courts have "self-help centers" where people can get the information and forms they need to handle guardianship or custody without an attorney, and some have online videos to help caregivers with the guardianship or custody process (such as Alaska, Arkansas, Ohio, Utah and Washington).

The following states appear to require lawyers for guardianship and custody cases: Florida, Indiana, Kansas, Louisiana, Missouri, North Carolina, South Carolina, and Texas. Resettlement programs may be able to find low cost legal help through: www.lawhelp.org.

What if the refugee family moves to another county, or to another state?

Families with legal guardianship should notify the court anytime their address changes. In some states, these families will need to change the "venue" (the court location) of the guardianship case if the family moves from one county to another. In other states, a change of venue is needed only when moving to a different state.

What if the relative does not want to become the child's guardian?

If the relative does not want to care for the child, or if the child does not want to live with the relative, this needs to be addressed immediately. Talk with the family and the child about whether there are any other relatives in the U.S. who are better able to care for the child. Consult with your national resettlement office. If the child already has local ties, you might consider referring the child to your local child welfare agency for foster care. If not, there are specialized refugee foster care programs that may be a resource. BRYCS is available to consult in any of these situations: **888-572-6500** or info@brycs.org.

What about the child's biological parents?

Courts will typically require that the child's birth parents be notified of the court proceedings, by either "serving" (mailing) the parents copies of the court documents or by publishing a notice in a local newspaper. The court may ask for death certificates for parents who have died, which may be difficult for refugee families to obtain. For an example of a court that has adapted its requirements for refugees, read about the **Ada County Courts** in Idaho.

Unlike adoption proceedings, guardianship and custody do not involve a "termination of parental rights," meaning the birth parents are still considered the child's parents. If a birth parent is living in the U.S., refugee families may want to consider signing a power of attorney, sometimes called "childcare power of attorney" or "delegation of powers" or "caregiver authorization affidavit" or "medical or educational consent." These procedures do not involve going to court and may be cheaper than guardianship or custody, but they usually must be renewed every 6 months, or every year. Typically, the child's parent is also required to sign the document. This may also be an option for children who are resettled with their parents, but who later go to live with another relative in the U.S. due to schooling, childcare or other reasons.

Resources:

- BRYCS' "Highlighted Resources" on Guardianship: <http://www.brycs.org/clearinghouse/Highlighted-Resources-Guardianship.cfm>
- State-by-state information on low cost legal help: www.lawhelp.org



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