

# **MAKING THE DECISION TO BECOME A CHILD'S PERMANENT FAMILY**

Department of Human Services

Having a permanent family and home can help children in two important ways:

1. A caring and loving family that is committed to providing a safe and permanent home promotes healthy growth and development and provides children with a sense of belonging.
2. Children can gain confidence in their family's ability to function independently without feeling that someone from the child welfare system (social worker, foster care licensing, guardian ad item or judge) could disrupt their family's life.

Without permanency, children often experience doubt, uncertainty, and hesitancy about where they belong and who is going to care for them. Placement with a permanent family permits the child welfare system to close a child's case and allows the family to raise the child as a member of the family until adulthood and to make important decisions without governmental involvement.

Families face an important decision when a child in their care needs a permanent family. Every foster family's situation and every child's situation are different. To make an informed decision about the permanency option for a child in their care, foster parents and prospective guardians need to understand the legal and financial differences between foster care, adoption and guardianship.

Foster parents who never intend to become guardians or adopt also need to understand the permanency options to assist children in their care with a transition to a permanent family.

## **Adoption or Guardianship? What's the Difference?**

Adoption and guardianship offer children and parents two similar paths to permanency. Both options provide permanent caregivers with many of the same legal rights as birth parents. However, adoption is a lifetime relationship that gives the child all of the legal benefits of a child born into the family. While guardianship builds family relationships that can last a lifetime, the legal relationship established by a juvenile court guardianship ends when the child turns 18 and is considered an adult. This is one reason why adoption is considered to be a more permanent lifetime commitment than guardianship.

Another important difference between these two permanency options concerns the birth parents' rights. For a child to be adopted, the rights of the birth parents must be legally terminated, voluntarily surrendered or the birth parents must have signed a consent to the adoption. With guardianship, the birth parents' rights do not have to be legally terminated.

With both adoption and guardianship, the permanent caregivers should realize that the child's birth parents and siblings may continue to be an important part of the child's life. Depending on the best interests of the child, birth family connections can be maintained with ongoing contacts after an adoption or guardianship.

The following chart outlines some of the legal differences between adoption and guardianship:

### Difference between Adoption and Guardianship

|                        | <b>Adoption</b>   | <b>Guardianship</b>  |
|------------------------|---|--|
| <b>Legal Status</b>    | The adoptive parents are given all the rights and responsibilities that once belonged to the birth parents. | <p>The guardians have primary rights and responsibilities for the child's protection, education, care, control, and decision-making on behalf of the child.</p> <p>The child continues to have a legal parent-child relationship with birth parents (if parental rights have not been terminated) but the birth parents' rights are limited by the guardianship.</p> |
|                        | Adoption is a permanent, lifetime legal relationship.   | <p>Guardianship is a legal and financial relationship that ends when the child reaches age 18. However, there should be a commitment by the guardian to continue to provide a family connection and support to the youth after age 18.</p> <p><b>Note:</b> A probate court may order guardianship beyond the age of 18, depending on the needs of the child.</p>     |
|                        | Birth parent's rights are terminated forever.   | Birth parents may retain important rights: visitation, access to information, notice of accidents or serious illness, etc., if parental rights have not been terminated.   |
|                        | Birth parents are no longer obligated to pay child support.   | Birth parents may have an ongoing child support obligation if parental rights have not been terminated.  |
|                        | When the adoptive parents are married, both spouses must adopt.   | Either one or both adult caregivers in the household may be named guardian.  |
| <b>Decision Making</b> | The adoptive parents have complete right to decision making about the child.                                | Guardians typically have the authority to make all decisions affecting the child regarding school, medical treatment, and consent for most other major life decisions.   |

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|--|---|--|
| <p><b>Relationship with birth parents and siblings</b></p> | <p>The adoptive parents have the right to determine if the child will have any relationship with the birth parents. In many cases, connections with birth parents and siblings will remain important to a child.</p> <p>Adoptive parents may determine that the birth family connections are in the child's best interest and can choose to maintain them in a way that works well for the child and the adoptive family.</p> | <p>When in the best interest of the child, guardians can facilitate visitation and involvement with the birth family as long as the court has not ruled against it.</p> <p>Connections to the child's birth family can be maintained in a way that works best for the child and the guardian.</p>  |
| <p><b>Child's legal name</b></p>                           | <p>The adoptive parents determine the child's legal name.</p>   | <p>The child retains his or her own legal name.</p>  |
| <p><b>Child's right to inheritance</b></p>                 | <p>The child inherits from the adoptive parents unless the legally-enacted will provides otherwise.</p>   | <p>The child inherits from the birth parents.</p>  |
| <p><b>Terminating the Adoption or Guardianship</b></p>     | <p>As with biological children, an adoptive child could enter the child welfare system due to abuse or neglect.</p> <p>Existing child welfare laws would apply and a state agency could again assume custody of the child.</p>  | <p>The guardian may ask the court to have the guardianship court order modified or to be relieved of permanent responsibility for the child. If the birth parents' rights have not been terminated, the parents may also ask the court to modify or terminate the guardianship. Good cause for modification must exist and the decision to modify the order would be at the discretion of the judge.</p> |

## Post-Permanency Services Available to Guardians

After a prospective guardian chooses a permanency option of guardianship for a child, there may continue to be a need for supportive services. Although the department's case closes after finalized adoption or guardianship, financial subsidies are available to children who meet eligibility requirements. Children who receive subsidies remain eligible for medical and mental health services through the Medicaid program.

## Educational Resources

Youths who enter adoption or subsidized guardianship after reaching age 16 are eligible to receive education and training vouchers funded through the Chafee Foster Care Independence Program. The department may prioritize vouchers to foster care youths in the event the number of eligible youths exceeds available voucher funding.

## Planning for Future Circumstances

It is important that families have a plan to care for children in the event of the caregiver's absence, illness or even death. Adoptive families and guardians should develop a back-up plan for another adult who could step in temporarily or permanently, if needed. The person should be someone who has a relationship with the child. The person should also have adequate resources and agree to the arrangement, should it become necessary.



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