



# Guardianship and Adoption What are the Differences?



This reference guide was developed through collaboration between the **Department of Children and Families** and the **Children and Family Law Division of the Committee for Public Counsel Services**.

These organizations are committed to improving permanency outcomes for children and youth in the care and custody of the Department of Children and Families. This guide is intended to inform and support families preparing to become legal parents or guardians of children who have taken up residence in their hearts and homes. The information in this guide is based on federal and state law and practice. It is not meant to be a “do-it-yourself” handbook or to provide legal advice. You may require an attorney’s assistance at some point in establishing guardianship or adoption.

## **GUARDIANSHIP and ADOPTION**

### **HOW ARE GUARDIANSHIP AND ADOPTION ALIKE?**

Guardianship and adoption provide a child or youth with stable, supportive parent(s), giving the caregiver(s) all the parental responsibilities involved with taking care of a child or youth, such as providing emotional support and ensuring they receive all of the basic necessities including a proper education and medical care. The most common question that lawyers and social workers get regarding permanency planning for children in foster care is, "What is the difference between adoption and legal guardianship?" While there are other differences between guardianship and adoption, one of the most important differences is that guardianship can be changed, while adoption is permanent. This information that follows will help you consider what is best for you, your children, and your family.

### **IS GUARDIANSHIP OR ADOPTION PERMANENT?**

**Guardianship:** A guardianship remains in place until the child turns 18 unless the guardian requests removal or the court terminates the guardianship. Anyone, including a parent, may petition the court to remove a guardian or terminate a guardianship if they can show a "substantial and material change in circumstances and it is in the child's best interests." A court may also terminate a guardianship if the guardian is investigated for or charged with abusing or neglecting the child, resulting in substantial bodily injury. In most circumstances you will not have an attorney appointed, but you may hire an attorney to represent you. The parents if income is limited, and the child, will have attorneys appointed to represent them. If you have already been awarded guardianship, and the parents file an action to remove you as guardian, the court shall appoint an attorney for you if you have cared for the child for at least two years or an otherwise significant period of time during the child's lifetime, and your income is limited.

**Adoption:** When a child is adopted, the adoption is forever. During the adoption hearing you may request a change in the child's name. A new birth certificate and a new social security card may be issued, removing the biological parents' names and listing the adoptive parent(s) as the child's parent(s). The adoption can be terminated through a court process that terminates parental rights for unfitness, in the same way that a biological parent's rights can be terminated for abuse or neglect of a child.

### **DOES THE CHILD HAVE TO AGREE TO THE ADOPTION OR GUARDIANSHIP?**

**Guardianship:** A child who is 14 years of age or older must agree to the guardianship.

**Adoption:** A child who is 12 years or older must agree to the adoption.

### **CAN I GET ANY FINANCIAL SUPPORT?**

Yes. You may receive adoption and guardianship benefits which may include health insurance, financial benefits equal to the amount of the daily foster care rate, tuition waiver assistance and/or deferred benefit, which means if the child develops needs later, the parent or guardian can ask DCF to increase the financial assistance to meet the new needs of the child. The Department social worker is required to have a subsidy application completed on behalf of any child in custody with the goal of adoption or guardianship.

## HOW DO I QUALIFY FOR A SUBSIDY?

The subsidy is based solely on the needs of the child and is evaluated and provided without regard to the income of the family.

### **Guardianship:**

- The child is currently in the permanent custody of the Department and the guardianship is sponsored by the Department.
- Guardian can be kin, child specific or unrestricted licensed resource.
- Subsidy is available until at least age 18 and may be eligible for an extension up to age 22 under certain circumstances.
- Return home has been considered and is not an appropriate option.
- Adoption has been considered and is not an appropriate option.

**Adoption:** The child must be in substitute care of the Department or licensed non-profit adoption agency, the adoption must be sponsored by the Department or non-profit agency, and at least one of the following applies:

- Child has one or more qualifying special needs diagnosed by a licensed qualified professional.
- Child is challenging to place due to being a member of a sibling group being adopted together.
- Child's birth or family history places the child at risk of having special needs but, due to the child's age, a reliable diagnosis cannot yet be made.

## CAN THE SUBSIDY BE EXTENDED BEYOND AGE 18?

If the guardian or adoptive parent continues to provide housing and support for the young adult, the guardianship and the adoption subsidy can be extended to age 22 under certain circumstances which include:

- Young adult has mental or physical disability or condition that warrants the continuation of assistance.
- Young adult is enrolled in a school, vocational or college program (state & federal).

## CAN SUBSIDY BENEFITS EVER CHANGE?

Yes, in both guardianship and adoption, subsidy benefits are reviewed every 2 years up to the young adult's 18<sup>th</sup> birthday, then annually until young adult's 22<sup>nd</sup> birthday. The supplemental/higher level of care can be increased or decreased if the documentation presented during a review indicates a significant change in the child's special needs. The regular daily rate will never be decreased. For information about subsidies, contact:

DCF Adoption/Guardianship Subsidy Unit

(800)835-0838

[dcfsubsidyunit@mass.gov](mailto:dcfsubsidyunit@mass.gov)

## ARE CHILDREN ELIGIBLE FOR SOCIAL SECURITY BENEFITS?

**Guardianship:** If the child is your grandchild, the child may qualify for Social Security benefits based on your work record. The child remains eligible to receive any Social Security benefits based on the parents' work records. Contact the Social Security Administration for more information. [www.ssa.gov](http://www.ssa.gov).



**Adoption:** If you are retired, the child may be able to receive Social Security benefits based on your work record. To see if you qualify contact the Social Security Administration at: [www.ssa.gov](http://www.ssa.gov).

### **CAN CHILDREN RECEIVE CHILD SUPPORT?**

**Guardianship:** Requests for child support from the parent(s) may be made by the child's guardian and ordered by the court. Amounts are based on the parent's income. Child support payments are typically made until the child turns 18 and the amount can only be changed by going back to court and requesting a modification of the order.

**Adoption:** When a child is adopted, the biological parents are no longer responsible for child support payments.

### **WILL THERE CONTINUE TO BE VISITS WITH THE BIRTH PARENTS?**

**Guardianship:** Birth parents have the right to request visitation, which the court may grant based on the best interests of the child. If there is no court order, visitation schedules and frequencies are at the discretion of the legal guardian.

**Adoption:** Prior to the adoption, birth and adoptive parents may sign an Open Adoption Agreement which specifies the frequency of future contact with the child. Following a termination of parental rights, a judge may decide that it is in the best interest of the child to have some contact with the birth parent and order some type of contact. If there is no court order or agreement, visitation schedules and frequencies are at the discretion of the adoptive parents.

### **CAN A VISITATION AGREEMENT CHANGE?**

**Guardianship:** Contact/visitation agreements can be changed by agreement of the parties or by the court's determination that a change is in the child's best interest. For example, the court can change the agreement and order that visits are increased or decreased, supervised or unsupervised.

**Adoption:** The court that allowed the adoption can reduce the frequency of visits or contact if the adoptive parent can show that doing so is in the child's best interest. A court has no authority to increase visitation/contact. The birth parent has no other rights except those in the court order or open adoption agreement. The adoptive parents can provide more visits if they want.

### **WHAT CAN I DO IF THE AGREEMENT ISN'T BEING FOLLOWED?**

**Guardianship:** Guardianship agreements and court orders for visitation/contact are enforceable in the court where they were allowed. A motion must be filed, and a hearing held. You may retain an attorney to represent your interests in such a hearing. Parents and children are entitled to court appointed counsel.

**Adoption:** Adoption agreements are enforceable in the court where the adoption was allowed. A motion must be filed, and a hearing held. You may retain an attorney to represent your interests in such a hearing. Parents and children are entitled to court appointed counsel. You have no right to court appointed counsel in these circumstances.

## CAN I CHANGE THE CHILD'S NAME?

**Guardianship:** A name change requires a proceeding in court where the guardianship was ordered. Biological parents have a right to be heard and object to the name change if parental rights have not been terminated. The court may deny the name change. If the court allows a name change under a guardianship, the birth certificate is not changed.

**Adoption:** The petition for adoption of a minor can include a request to change a child's name and a motion to amend the birth certificate following the adoption. The court allowing the adoption sends the necessary paperwork, along with an original birth certificate, to vital statistics. Within 4-6 months a new birth certificate is issued to the adoptive parents reflecting the names of the adoptive parents and child's new name if it was changed.

## WHO MAKES MEDICAL DECISIONS?

**Guardianship:** A guardian makes routine medical decisions but cannot make decisions involving "extraordinary" medical treatment for the child. The guardian should ask the medical provider if the treatment is considered "extraordinary" and if so, the Court will decide whether to allow the treatment. If the Court makes an order authorizing recurring medical treatment, then that order must be reviewed at least once a year. Note that your health insurance may allow you to add the child to your policy after you have guardianship.

**Adoption:** An adoptive parent may consent to any medical treatment, whether routine or extraordinary, on behalf of the child.

## WHO MAKES EDUCATIONAL DECISIONS?

**Guardianship:** The guardian makes educational decisions.

**Adoption:** The adoptive parent makes educational decisions.

## AM I REQUIRED TO FILE A REPORT WITH THE COURT?

**Guardianship:** The guardian must file an annual report with the court that issued the guardianship. For the annual report form required, see:

Juvenile Court: <https://www.mass.gov/files/documents/2016/08/ms/report-of-the-guardian-of-the-minor-jv-078re.pdf>.

Probate and Family Court: <https://www.mass.gov/files/documents/2017/01/qg/mpc443-annual-report-of-guardian-of-minor-fill.pdf>.

**Adoption:** The court case is final. You are now the legal parent. No annual court report is required.

## CAN MY FAMILY MOVE OUT OF MASSACHUSETTS?

**Guardianship:** The guardian and the child can move out of state with permission from the court. Medical benefits and subsidies may change if you move outside Massachusetts. Seek advice from the child's social worker or the Subsidy Unit.

**Adoption:** The adoptive parent does not need permission from the court to move out of state with the child. Medical benefits and tuition benefits may change if you move out of state. Seek advice from the child's social worker or Subsidy Unit.

#### WHAT RELIGION WILL THE CHILD PRACTICE?

**Guardianship:** Guardians must allow the child to practice the child's preferred religion.

**Adoption:** An adoptive parent can decide the child's religion.

#### CAN I GET ASSISTANCE WITH COLLEGE EXPENSES?

**Guardianship and Adoption:** Depending on state funding, there is a State College Tuition Waiver and Fee Assistance Program for youth who were in DCF foster care for at least six months before a DCF sponsored guardianship or a DCF sponsored adoption.

All requests for the Tuition Waiver Certificate must be accompanied by a letter which includes the name of the adoptive parent(s) or guardian(s), the current mailing address, the child's name, and a copy of the child's birth certificate. Requests and inquiries should be sent to:

**DCF Adoption/Guardianship Subsidy Unit**

(800) 835-0838

[dcfsubsidyunit@mass.gov](mailto:dcfsubsidyunit@mass.gov)

Attention: Subsidy Unit / Tuition Waiver

600 Washington Street, 6th floor, Boston, MA 02111

Please see helpful links below for additional guidance:

Department of Children and Families (DCF) Foster Child Tuition Waiver and Fee Assistance Program:

[https://www.mass.gov/info-details/department-of-children-and-families-dcf-foster-child-tuition-waiver-and-fee-assistance#who-is-eligible?-](https://www.mass.gov/info-details/department-of-children-and-families-dcf-foster-child-tuition-waiver-and-fee-assistance#who-is-eligible?)

Department of Children and Families (DCF) Adopted Child Tuition Waiver and Fee Assistance Program:

<https://www.mass.edu/osfa/programs/dcfadopted.asp>

DCF Adopted and Foster Child Fee Assistance Program Student Eligibility Checklist:

[https://www.mass.edu/osfa/programs/documents/DCF\\_Fee\\_Assistance\\_Program\\_Checklist.pdf](https://www.mass.edu/osfa/programs/documents/DCF_Fee_Assistance_Program_Checklist.pdf)

#### WHO HAS CUSTODY OF THE CHILD IF I DIE?

**Guardianship:** Upon the death of the guardian, the guardianship ends, and custody returns to the party who had custody prior to the guardianship being allowed. For example, custody returns to the parent or DCF if DCF had custody. A guardian may appoint a new guardian for the minor by will, or by other writing signed by the guardian and attested by 2 witnesses. The 'new' guardian must file with the Court within 30 days of the guardian's death to have the appointment confirmed.

**Adoption:** In a two-parent household, upon the death of one adoptive parent, custody would remain with the surviving parent assuming both adopted the child. In families with only one adoptive parent, that parent can name a guardian by will or other writing signed by the adoptive parent and attested by 2 witnesses. That named guardian must file with the court within 30 days of the adoptive parent's death to have the appointment confirmed.

## **WILL THE CHILD INHERIT FROM ME?**

**Guardianship:** Children do not inherit from the guardian unless the guardian has left an executed will. Children inherit from their parents.

**Adoption:** A child who is adopted will inherit from the adoptive parents and does not have inheritance rights from biological parents unless the biological parents have left the child an inheritance through an executed will.

## **WHAT SERVICES ARE AVAILABLE ONCE I BECOME A GUARDIAN OR ADOPTIVE PARENT?**

**Guardianship:** Services are provided through community providers and/or through a voluntary application process for DCF clinical services. You may want to contact:

Adoption Journeys

<https://child-familyservices.org/adoption-journeys-program-components/>

Kinship Navigator

1-844-924-4KIN

<https://www.mass.gov/kinship-navigator>

Commission on the Status of Grandparents Raising Grandchildren

1-617-748-2454

[http://www.massgrg.com/massgrg\\_2019/index.html](http://www.massgrg.com/massgrg_2019/index.html)

**Adoption:** There are post-adoption services in the community and through organizations with a mission to provide support to adoptive families and their children.

Adoption Journeys

<https://child-familyservices.org/adoption-journeys-program-components/>

Adoptive Parents Together

<https://www.mspcc.org/aft/>

MARE (Massachusetts Adoption Resource Exchange)

<https://www.mareinc.org/page/other-family-support-services>

This publication was edited and funded by the Massachusetts Court Improvement Program (CIP) which is supported by federal grants and administered by the Supreme Judicial Court. CIP encourages and supports systemic improvements to support the safety, well-being, and permanence of children. CIP collaborates with Massachusetts child welfare stakeholders including the Juvenile Court, the Probate and Family Court, the Department of Children and Families, and the Children and Family Law Division of the Committee for Public Counsel Services.