

# Children's Law Center of Indiana



## Guardianship as a Permanency Plan for CHINS<sup>1</sup>

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The Indiana statute on permanency plans includes the appointment of a legal guardian for the child as a permanency plan which the juvenile court may approve. IC 31-34-21-7.5(c)(E). IC 31-30-1-1(10) gives the juvenile court exclusive original jurisdiction over guardianship of the person proceedings for an adjudicated Child in Need of Services whose CHINS case is open and for whom the juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian of the person. The juvenile court's jurisdiction over a guardianship for a CHINS child may continue until the child is nineteen years old if the child is a full-time student in a secondary school or vocational or career and technical education. IC 31-30-2-1(d). Although the juvenile court guardianship of a CHINS may extend until the child's nineteenth birthday, guardianships for children who are not CHINS terminate by law on the child's eighteenth birthday.

When a juvenile court guardianship as a CHINS permanency plan is initiated in juvenile court, a separate guardianship file with a GU cause number should be created by the clerk's office. A separate guardianship file will be needed for the juvenile court to issue and modify court orders about the child after the CHINS case is closed. The guardianship file will contain the guardianship petition, any consents to the guardianship signed by the parent and the child (if the

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child is fourteen years of age or older), the court order appointing the guardian, the guardian's Oath and Letters, and any court orders issued after the original guardianship appointment order such as orders modifying visitation for the parents. The CHINS documents and reports may not be part of the guardianship file unless they are offered to the court as exhibits and admitted into evidence by court order.

In addition to providing a stable home for the child, another purpose of appointing a guardian for an adjudicated CHINS is to close the CHINS case. When the guardian is appointed, the child is no longer a ward of DCS and will not be assigned to a DCS family case manager. The child will no longer have a Guardian ad Litem or court appointed special advocate unless the guardianship court makes an appointment order. DCS will no longer make referrals to services or pay for services for the child or parent. DCS Assisted Guardianships, which provide some limited funds, may be available under limited circumstances and if funds are available. The proposed guardians would need to discuss with DCS whether an assisted guardianship might be available to them. The court will usually not hold review hearings unless requested to do so by the parents or guardian. The guardian, not DCS, will make decisions about the child's care. The guardian will need to locate and apply for financial assistance for the child, including Hoosier Healthwise (Medicaid), food stamps, TANF, Social Security due to the parents' death or disability, free or reduced fee school lunches, and Supplemental Security Income due to the child's disabilities. The guardian will need to be responsible, competent, protective, and resourceful, and will need to prioritize the child's needs over the wishes of the parents and other family members.

Guardianship may be more desirable as a permanency plan because it saves resources (attorney fees, court time, and time of witnesses). Involuntarily terminating the parent-child relationship is expensive, time-consuming, and also emotionally difficult for families. In some cases, guardianship may also be preferred over adoption by the prospective guardian and/or the child. Guardianship may be obtained either with parental consent or through the presentation of evidence to show why the guardianship is needed. Some parents will choose to consent to guardianship to avoid completing services or to avoid ongoing contact with DCS, the Guardian ad Litem or service providers, and the numerous court hearings associated with a CHINS case. Some parents anticipate that the guardian will allow them more visitation with the child. Parents may plan to

ask the guardian to return the child to them. Parents may also plan to ask the court to terminate the guardianship in the future.

If both parents do not consent to the guardianship, the guardianship petitioner will need to present clear and convincing evidence of one of the following: (1) parental unfitness; (2) voluntary relinquishment of the child by the parents; (3) long acquiescence by the parents in leaving the child with the guardian so that the child's affections have become so intertwined that severing the child from the guardian would seriously endanger the child's happiness. Clear and convincing evidence must also be shown that there is a substantial and significant advantage to the child in being placed in the guardian's care.

A guardian's role is completely different from the role of a Guardian ad Litem or court appointed special advocate. The Guardian ad Litem or court appointed special advocate represents and protects the child's best interests. When the court appoints a guardian for the child, the guardian has all of the responsibilities and authority of a parent. IC 29-3-8-1. The guardian is not required by law to use the guardian's own funds to support the child, but in practice, many guardians financially support their wards. The guardian may ask the court to order child support payments to be made to the guardian, but the parents may not comply with court orders to pay child support. Often the problems which led to the child needing a guardian, such as parental incarceration, substance abuse, or mental health problems, may reduce the likelihood of parents paying child support to their child's guardian. The guardian of a child may consent to the child's medical care, school enrollment, or marriage. IC 29-3-8-2. The court may, at the time of the appointment or later, enter an order specifically limiting a guardian's powers. IC 29-3-8-8. The guardian must answer to the court for failure to follow the court's orders and, after notice and a hearing, may be found in contempt of court. IC 29-3-7-4. If a child has funds, the guardian must file a written sworn accounting with the court at least every two years or more often if the court directs. IC 29-3-9-6.

The court will frequently order visitation for the parents in a guardianship. The guardian may want to have specific visitation ordered by the court in the guardianship case so that the arrangements are clear and to avoid a point of contention with parents. In CHINS permanency

cases, visitation for parents should usually be supervised and/or time limited. The child is not being reunified with parents, so it is likely that the parents still have significant problems. Indiana Parenting Time Guidelines visitation will usually not meet the child's safety needs. It may be helpful for the written court order in the guardianship case to state that no additional visitation other than what is outlined in this order is permitted. The court will expect the guardian to comply with the visitation orders. The guardian will need to petition the court, attend a hearing, and present evidence to convince the court to change court ordered visitation. One of the strongest concerns with guardianship as a permanency plan is the guardian's ability and willingness to follow court orders and request needed changes in court orders to protect the child.

A guardian may ask the court for permission to resign as guardian. The court may accept the guardian's resignation and may appoint another person to serve as successor guardian. IC 29-3-12-4. The court may remove a guardian who fails to follow court orders or to perform duties properly. IC 29-3-12-4. The child's parents may ask the court to remove a guardian and appoint a successor guardian. IC 29-3-12-4.

The parent(s) can ask the court to terminate the guardianship if it is no longer necessary. IC 29-3-12-1. The guardian always has the legal burden of proving why the guardianship should continue. The legal factors which the guardian must prove by clear and convincing evidence to retain legal guardianship are the same as the factors required to secure a guardianship. The guardian may need to hire an attorney to represent the guardian if the guardian does not agree with the parent(s)' guardianship termination request.

The following links to DCS policies on guardianship may be helpful:

[http://www.in.gov/dcs/files/8.40\\_Guardianship.pdf](http://www.in.gov/dcs/files/8.40_Guardianship.pdf) (the DCS policy on guardianships)

<http://www.in.gov/dcs/2533.htm> (under Forms, there is a Guardianship Assistance Agreement)

[http://www.in.gov/dcs/files/Admin\\_Letter\\_04-16\\_-\\_Assisted\\_Guardianship.pdf](http://www.in.gov/dcs/files/Admin_Letter_04-16_-_Assisted_Guardianship.pdf) administrative letter on assisted guardianships)