

# Adoption and Guardianship Comparisons

Both adoption and guardianship are commitments to children. The commitment entered into by adopting a child is one that lasts for a lifetime. Guardianship legally ends when the child reaches adulthood, making it the less permanent of the two options. However, legal guardians entering into this commitment should intend it to be a lifetime relationship. Thus, both adoption and guardianship are commitments to be taken seriously by caregivers and professionals.

	Adoption	Guardianship
<b>Legal Status</b>	<p>The adoptive parent(s) is/are given all the rights and responsibilities that once belonged to the birth parent(s).</p> <p>Adoption is a permanent, lifelong, legal relationship.</p> <p>Birth parents' rights are voluntarily relinquished or involuntarily terminated.</p>	<p>The guardian of a minor shall be entitled to the custody and control of the ward and must provide for the ward's education, support, and maintenance.</p> <p>The court makes all decisions regarding the guardianship, but the birth parent(s) can request that the guardianship be terminated and that the child be returned to their care if parental rights have not been terminated.</p> <p>It is the burden of the parents to prove to the court that they are fit, suitable and able to provide proper care to their child, and that the change is in the child's best interest.</p> <p>If the legal guardian decides to file a petition for adoption at a later date, the birth parents' parental rights must still be terminated. Legal costs associated with the termination of parental rights will be assumed by the guardian and are not eligible for subsidy reimbursement.</p>
<b>Inheritance</b>	<p>Once a birth parent's rights are terminated, the child no longer has inheritance rights and is no longer entitled to benefits through a relationship with the biological parent.</p> <p>An adopted child has all of the same rights as birth children when the adoptive parent(s) does not have a will. Otherwise, inheritance rights are established through a valid will, as they are for birth children. Additionally, adopted children automatically are entitled to survivor's benefits such as pension or Social Security in the event of an adoptive parent's death.</p>	<p>The child has no rights of inheritance from the legal guardian unless the child has been included in the legal guardian's will. The child continues to have the right to inherit from their biological parents if the parents' rights have not been terminated.</p>
<b>Decision Making</b>	<p>All decisions are made by the adoptive parent(s).</p> <p>Unregulated custody transfers involve transferring physical custody of a child without the oversight of child welfare authorities or court involvement. Such transfers put a child at risk of abuse, neglect, emotional trauma, and placement instability. An adoptive parent may not transfer the custody</p>	<p>Major decisions regarding school, medical treatment and consent for most other major life decisions are made by the legal guardian. However, the court may limit the authority of the guardian to make certain decisions.</p>

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	<p>of a child to another person or institution without first having obtained a court order approving or ordering transfer of custody. <sup>1</sup> Transferring custody in violation of law may be a crime under some circumstances.</p>	<p>The guardian is responsible for annually updating the court on the status of the child. The guardian will receive a form from the court to complete and submit. <sup>2</sup></p> <p>The guardian continues to be legally responsible for the child even if the child leaves the home or if a power of attorney is granted to someone else. The guardian's legal responsibility ends only if or when the probate court dissolves the guardianship, legal custody is transferred to someone else through the court, or the child turns 18.</p>
<p><b>Financial Assistance &amp; Subsidy Services</b></p>	<p>The adoptive parent(s), whether receiving a subsidy or not, are financially responsible for the support of the child.</p> <p>Children adopted from foster care are eligible for adoption subsidy. Adoption subsidy services must be discussed with the subsidy worker assigned to the child's case. The adoption subsidy agreement must be approved prior to adoption finalization and includes Medicaid, Maintenance, Respite and certain Non-Recurring Legal Fees. In Missouri, children receiving adoption subsidy are also eligible for child care through the Department of Elementary and Secondary Education (DESE).</p> <p>If the child's physical, dental, or mental health condition causes them to require extraordinary, specialized care beyond the age of 18, an 18+ adoption subsidy agreement may be negotiated.</p> <p>Adoptive parents may also be eligible for additional benefits such as FMLA, MO Adoption Tax Credit, and the Federal Adoption Credit.</p>	<p>A legal guardian, whether receiving a subsidy or not, is financially responsible for the support of the child.</p> <p>A guardianship subsidy through the Children's Division is available for eligible children placed with qualified relatives or close non-related persons.<sup>3</sup> The guardianship subsidy agreement must be approved prior to guardianship finalization and includes Medicaid, Maintenance, Respite and certain Non-Recurring Legal Fees. In Missouri, children receiving guardianship subsidy are also eligible for child care through DESE. Guardianship subsidy is only available until the child's 18<sup>th</sup> birthday.</p> <p>If the birth parents' rights have not been terminated, they generally will be held responsible for contributing to the financial support of the child. This decision will be made by the court.</p> <p>If a legal guardian later chooses to pursue adoption of the child, it is imperative that they contact their subsidy worker prior to filing a petition to adopt. Adoption subsidy may be available in this circumstance. An adoption subsidy agreement must be approved prior to adoption finalization, if available.</p> <p>A guardian of a minor may apply to the county commission pursuant to section <a href="#">475.370</a> for assistance.<sup>4</sup></p>

<sup>1</sup> See §453.110 RSMo.

<sup>2</sup> See §475.082 RSMo.

<sup>3</sup> See §453.072 RSMo.

<sup>4</sup> See §475.120.4 RSMo.

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<b>Relationship with the Birth Parent(s) and Siblings</b>	<p>The adoptive parents have the right to determine if the child will have any relationship with the birth parent(s). However, in many cases connections with birth parents or siblings will remain important to a child. Adoptive parents may determine that those 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>Prospective adoptive parents and birth parents may enter into a written post adoption contact agreement (PACA) to allow contact, communication, and the exchange of photographs between the adoptive parents and the birth parents after the adoption. The agreement is to be filed with and approved by the court at or before the finalization of the adoption. The court will approve an agreement only if the agreement is in the best interests of the child. The court may enforce or modify an agreement unless such enforcement or modification is not in the best interests of the child. <sup>5</sup></p> <p>Prior to an adoption finalization, adoptive parents may review the child's record, to include non-identifying information about the biological parents.</p> <p>The Missouri Adoption Information Registry allows adopted adults (ages 18+), their biological parents, and adult siblings (ages 18+) to register to contact one another. More information can be found at: <a href="#">Children's Division   Missouri Department of Social Services</a></p>	<p>Birth parent(s) retains important rights, for example, visitation or contact can be ordered by a court in a guardianship proceeding if the court determines it is in the best interest of the child.<sup>6</sup></p> <p>For many children moving to legal guardianship, relationships with birth parents or siblings are very important. Connections to the birth family can be maintained in a way that works well for the child and the legal guardianship family.</p> <p>It is the responsibility of the legal guardians to ensure the child's safety and well-being when allowing visitation with the birth parents.</p>
<b>Child's Legal Name</b>	<p>The court may enter a name change for the child as part of the order finalizing the adoption.</p>	<p>The child retains his/her own legal name.</p>
<b>Consent of the Child</b>	<p>A child who is 14 years of age or older must consent to his/her own adoption unless the court makes a determination that they lack the mental capacity to do so.</p>	<p>The court shall consider the consent of a child 14 years of age or older in determining whether to establish a legal guardianship.</p>
<b>Death of Adoptive Parent/Guardian or Termination of Adoption or Guardianship</b>	<p>A child adopted with adoption subsidy remains eligible for adoption subsidy when he/she is orphaned due to the death of his/her adoptive parent(s) or when a court terminates the adoptive parent(s) parental rights. He or she may receive adoption assistance if adopted by someone else.</p>	<p>A child for whom a legal guardianship subsidy was received does not automatically remain eligible for the subsidy due to the death or incapacity of his/her legal guardian(s), unless a successor guardian has been named in the agreement.</p>

<sup>5</sup> See §453.080 RSMo.

<sup>6</sup> See §475.084 RSMo.

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