



KINSHIP CAREGIVER LEGAL GUIDE

Do You Know Your
Legal Options as a
Kinship Caregiver?



KINSHIP CARE
resource center



Providing tools for those who care.

Contents

| | |
|----|--|
| 3 | Why is it important to know about legal options? |
| 3 | Why aren't legal options the same for all kinship families? |
| 4 | What legal options allow a kinship caregiver to make decisions for their relative child? |
| 4 | ♦ Power of Attorney |
| 5 | ♦ Guardianship |
| 5 | • EPIC guardianship (full and limited) |
| 7 | • How residual rights affect EPIC guardianship |
| 8 | • Juvenile guardianship |
| 10 | What do CPS and foster care licensing have to do with decisions about guardianship? |
| 10 | ♦ About foster care |
| 12 | Are there other legal relationships? |
| 12 | ♦ Child custody (physical and legal) |
| 12 | ♦ Adoption |
| 13 | What is different about the legal system for Native American children? |
| 14 | Resources |
| 14 | Additional resources |
| 19 | Summary |
| 20 | Glossary of legal terms |





Do You Know Your **Legal Options** as a **Kinship Caregiver?**

Why is it important to know about legal options?

Your legal relationship with the child in your care is important because it determines what:

- **Decisions** you can and cannot make for the child.
- **Funding** you and the child are eligible to receive.
- **Services** are available to you.
- **Actions** are needed for the legal status to continue or to change it.

Why aren't legal options the same for all kinship families?

There are many ways children end up being raised by people who are not their parents. Formal and informal arrangements may be made to protect children and keep them safe. The legal rights and responsibilities of kinship caregivers vary depending on the type of arrangement. The three main ways children come to be cared for by others are:

- **Voluntary placement** when the parent chooses to place the child in the care of someone else.
- **Involuntary placement** when Children's Protective Services (CPS) places a child because of proven (substantiated) abuse or neglect.
- **Death of a parent** and there is no other parent who can raise the child.



What legal options allow a kinship caregiver to make decisions for their relative child?

Power of Attorney (POA) allows a parent to give permission for someone else caring for their child to make decisions about the child's financial, medical, or educational needs. A POA:

- **Needs to be renewed** every six months.
- **Can be cancelled easily** and is not as secure as legal custody or guardianship.
- **May be granted** without the court's involvement.

A FAMILY STORY: Dana is sending her 8-year-old son Timmy to spend the summer with his grandparents. Timmy's father died of a drug overdose, and Dana needs time to manage her grief and secure housing.

She has written a letter (**Power of Attorney**) stating that the grandparents can get emergency medical care for her son during the three months he is staying with them.



Guardianship involves the court granting a person the power to take care of a child by giving them basic legal rights and duties to care for the children they are raising. There are two types of guardianships—**EPIC** and **juvenile**.

EPIC guardianship is named after the law that defines it, which is the **Estates and Protected Individuals Code**.

An EPIC guardianship is handled in the Probate Court often without the help of an attorney. It is an option when the person caring for a child has no other legal relationship with the child.

EPIC guardianship can be **full** or **limited guardianship**.

- **Full guardianship** allows a caregiver to have legal rights (enroll in school, make decisions) and physical custody rights (daily care) usually held by parents. **A caregiver does not need the parents' permission to get a full guardianship.**

A FAMILY STORY: Dana has not come to pick up her son after the summer is over. The grandparents can't reach her and believe she is using drugs again. They need to enroll Timmy in school if he is staying with them into the fall. They go to court, and the judge grants them **full guardianship**.

NOTE ABOUT FINANCIAL SUPPORT: Full guardianship allows Timmy's grandparents to take care of their grandson and make legal decisions for him, and the financial burden of his care is up to them.



- **Limited guardianship** in Michigan requires the child's parents and the person requesting guardianship to file a request together in the Probate Court. **Generally, the court will not give a limited guardianship unless the parents agree to the arrangement.**

The guardianship forms must: (1) state a reason for the limited guardianship, (2) explain the plans in place to keep the child's relationship with the parents, (3) state who will provide financial support for the child's expenses, and (4) list the specific rights granted to the caregiver (enroll in school, get medical care, sign for a driver's license, etc.).

If a parent(s) doesn't follow the requirements written on the court order without a good reason, that person's parental rights may be terminated by the court.

A FAMILY STORY: Several months after the grandparents enrolled their grandson in school, they hear from Dana. She tells them that she has gone to rehab and would like them to take care of Timmy until she is back on her feet. She wants to give them custody until then. The grandparents are living on Social Security and are hopeful that Dana will provide financial support for Timmy.

Together, Dana and the grandparents go to court to fill out **limited guardianship** forms that say that the grandparents can make all decisions for their grandson for the next six months and that Dana will pay \$300 a month for his care.

NOTE ABOUT FINANCIAL SUPPORT: The court does not enforce financial arrangements described in limited guardianship papers.



Support
for a strong
future



How residual rights affect EPIC guardianship

With both full and limited guardianships, the birth parents still have **rights and responsibilities, called “residual rights.”** Residual rights include:

- The right to agree to an adoption.
- The right to change the child’s name.
- The responsibility to financially support the child.
- When a caregiver has guardianship of a child, the birth parents can petition the court to stop the guardianship.

A court can end a guardianship if it is determined to be in the best interests of the child.

A FAMILY STORY: Six months into the guardianship, Dana contacts her son’s grandparents to tell them that she is married and not using drugs anymore and she wants her son back.

The grandparents believe Timmy is doing well with them and suggest keeping the guardianship in place, as they believe this would be better for Timmy.

Dana takes the grandparents to court, as is her right as described above, to have Timmy returned to her. The judge grants Dana custody, and the grandparents must return their grandson to his mother’s care.



Juvenile guardianship may only be considered when:

- The child is in foster care.
- The court determines that the child should not be returned home, but parental rights should not end.

A juvenile guardian has all the powers and duties of an EPIC guardian. Any restrictions on the powers of the juvenile guardian must be included in a legal document called the “letters of authority.”

Unlike an EPIC guardian, a juvenile guardian may be eligible for the Guardianship Assistance Program, or GAP.

Although the foster care case will be closed when a juvenile guardian is appointed, the court remains involved with the guardians and the child. Annual guardianship reviews are required, and additional reviews may be ordered by the court as necessary.

A juvenile guardianship can continue until the child is considered independent or until the guardianship is revoked.

The court may hold a hearing to determine whether a juvenile guardianship should be terminated. Sometimes the Michigan Department of Health and Human Services (MDHHS) can make a written request to the court, or the child’s lawyer-guardian ad litem (L-GAL) can make this request.

Parents MAY NOT petition the court to terminate a juvenile guardianship.



A FAMILY STORY: Dana's substance use relapses, and her behavior places Timmy's safety at risk. CPS identifies the grandparents as a potential placement for Timmy and conducts a safety assessment of the home. The court makes the decision to remove Timmy from his mother's care, and the foster care agency works with Timmy's grandparents on providing a safe placement. After successfully passing initial safety checks, Timmy's grandparents are asked to decide whether they would like to pursue foster care licensing, which provides them with training, case management, continued relative assistance payments, and access to a community of other foster and kinship families. After contacting the Kinship Care Resource Center and learning about supports and options available to them, they decide to apply for a foster care license and get connected to the Foster Care Navigator Program.

When a foster care case remains open, the state must work with Dana on her plans to regain custody of Timmy. After some time (usually at least one year,) if the court finds Dana is still unable to care for Timmy, the court could choose to award juvenile guardianship to Timmy's grandparents. Alternatively, the court could choose to terminate Dana's parental rights, and the grandparents could then apply to adopt Timmy.

Because Timmy's grandparents chose to be a licensed foster care placement for Timmy, they will qualify for the Guardianship Assistance Program (GAP) to help them with the legal costs that come with juvenile guardianship or adoption.

NOTE ABOUT FINANCIAL SUPPORT: Juvenile guardianship cases are different than guardianship cases awarded through the Probate Court because the decision takes place only during a relative foster care placement. The child must reside in the home for at least six months to be eligible for GAP. Juvenile guardianship is the only form of guardianship that can result in the caregiver receiving foster care assistance payments and other formal supports like the Guardianship Assistance Program.



KINSHIP CARE
resource center

Because family is what you make it.

What do CPS and foster care licensing have to do with decisions about guardianship?

When a child is removed from their parent/s, Michigan prioritizes placing the child with a family member, also known as a **kinship caregiver**. The kinship caregiver is often faced with many life changes, and the new circumstances can be overwhelming and stressful. Due to time constraints and pressure to secure safety for the child, many relatives believe they must become the guardian for the child and go to the Probate Court immediately to file papers for guardianship.

While the CPS case remains open, the caregiver's decisions are very important because they will have an impact on the way support and assistance are available to the kinship household.

About foster care

Once a child is in foster care, the court and agency determine placement, which can mean the child could initially be placed with one relative and could be moved to a different placement. Kinship caregivers can choose to be considered as a foster care placement for a relative child. Routine visits with a foster care worker are involved in this choice, but relative assistance payments are available to help with the care of the child.

Reasons that kinship caregivers do not have the option of foster care can include having a lack of facts at the time of placement. Distrust and stigma are often associated with foster care, like fear of the child being removed or the strain on family relationships. Foster care has historically been understood as a process of removing children from their family to the care of others. Foster care **can** involve the care of relatives and **is the only way for a kinship family to receive available relative assistance payments and other supports**.

The decision to be a foster care placement can make a big difference for the well-being of both the children and kinship caregivers whether or not they decide to get a foster care license.



A FAMILY STORY: Jennifer, a grandmother whose granddaughters go to school with Timmy, receives a call that her granddaughters have been removed from their home due to their mother's addiction treatment. The CPS worker asks Jennifer if she will care for Tina and Tiana. She agrees and is given a packet of information. The CPS worker asks her to decide how she will proceed with decision making on behalf of the girls. She has never heard of relatives being involved in foster care, and is confused by any mention of foster care, fearing that could mean the girls could be removed from her, too. She and the CPS worker have awkward conversations about this, and she feels pressured to make a decision about what to do to make things safe for the girls. She decides to go to Probate Court and applies for full guardianship. Now that Tina and Tiana have a guardian, the CPS case is closed.

One year later, Jennifer meets Timmy's grandmother at an online kinship support group. She learns that Timmy's grandparents are a foster care placement for Timmy and they receive monthly relative assistance payments. Timmy's grandmother suggests that maybe Jennifer could be a foster care placement for her granddaughters, too. Jennifer calls the Kinship Care Resource Center and learns that since she is the full legal guardian for Tina and Tiana, she is responsible for all of their needs and is no longer eligible to become a foster placement for them. She learns about applying for the Child Only Grant, a limited form of cash assistance, but is frustrated and confused that she didn't understand she could be a foster care placement.



NOTE ABOUT FINANCIAL SUPPORT:

If a CPS case is closed and guardianship is arranged through the Probate Court, there is no longer an option to pursue foster care or receive foster care assistance payments. The only financial support available to caregivers who have probate guardianship is a Child Only Grant, a limited form of cash assistance through MDHHS.

Financial supports available through foster care can also include more than relative assistance payments. Examples include case management, clothing allowances, access to a network of others with similar needs, and help with periodic expenses like orthodontic treatment, driver's education, graduation, and prom.

Are there other legal relationships?

Other types of child custody cases are handled in the Family Division of the Circuit Court. Child custody cases most often involve arguments between parents who have divorced or were never married.

However, a guardian of a child may also seek a **child custody** order, which offers greater rights than a guardianship order.

If there is a custody order and a court finds it is in the child's best interest to return custody of the child to the parent, the court has the ability to award the kinship caregiver parenting time in the future. This is not the case in guardianship arrangements.

There is a difference between **physical custody**, which determines where the child will live, and **legal custody**, which gives the right to make decisions for the child's well-being. The court must address both types of custody in its orders.

Adoption is a legal option that requires the complete and permanent termination of all legal aspects of the parent-child relationship. The kinship caregiver who becomes a parent through adoption gains all the rights and obligations of a birth parent. This is the highest level of custody outside of the birth parent relationship as the courts see adoption of a child as if the child were born to you. This also means that the right of inheritance shifts from the birth parent to the adoptive parent.

Often, adoptive families can receive payments from the state if the child spent time in foster care.

Adoptions are handled in the Family Division of the Circuit Court, most often as the result of a CPS case. Kinship caregivers who are not involved with a CPS case can also seek adoption, although the process is complicated and often expensive.

Adoption may not be appealing to some kinship caregivers, especially those who hope that the birth parent(s) will one day again care for their children.



What is different about the legal system for Native American children?

An Indian child is legally defined as a person under the age of 18 who is a member of a tribe or a person who is qualified for membership in an Indian tribe that is recognized by the federal government. What this means is that in every case involving an Indian child with membership in a recognized tribe, the court must notify:

- The parents.
- Any Indian custodian.
- The child's tribe.

Federal and state laws require that the courts take certain additional steps in cases (both voluntary and involuntary) involving the placement of American Indian and Alaskan Native children. These cases include:

- EPIC guardianships.
- Juvenile guardianships.
- Foster care placement.
- Termination of parental rights.
- Adoption.

Both the child's Indian custodian and the child's tribe have a right to become involved at any point in the child's case. A tribe may also request that the case be removed from the state court and transferred to the **Tribal Court**, and the state court must comply.



Resources

MSU Chance at Childhood

chanceat@law.msu.edu

Phone: **517-432-6880** Fax: **517-432-6990**

The Chance at Childhood program is an initiative between the MSU School of Social Work and MSU College of Law, designed to protect and serve the rights of children. The Law and Social Work clinic provides advocacy and consultation to children, families and professionals in the field of child welfare.

Kinship Care Resource Center

kinship@msu.edu

Phone: **800-535-1218**

The Kinship Care Resource Center (KCRC) is one of several community programs in the School of Social Work at Michigan State University. The KCRC serves kinship care families across the state by providing information and referrals for caregivers and the children they are raising. Kinship Care Navigators have lived experience raising their own relative children and offer first-hand understanding about the complexities of kinship care.

Foster Care Navigator Program

www.fcnp.org

Phone: **1-855-MICKIDS**

The Foster Care Navigator Program (FCNP) is made up of a dedicated team of individuals throughout the state of Michigan, committed to providing information, resources, and support to all current and prospective foster families.

Additional resources

Free phone consultation for seniors 60 and over:

Legal Hotline for Michigan Seniors

800-347-5297

Mediation services for kinship families:

Dispute Resolution Education Resources

517-485-2274

www.michiganresolution.org

Referrals for a private attorney:

Michigan Bar Association

800-968-0738

www.michbar.org

Information about grandparent visitation rights:

National Non-Profit Grandparents Rights Organization

248-646-7177

www.grandparentsrights.org/victor.htm

For help caring for a child with developmental disability or mental illness:

Michigan Protection and Advocacy Service

800-414-3956

To file a complaint on services or staff working in protective services, foster care or adoption services of the Michigan Department of Health and Human Services:

Office of the Children's Ombudsman

800-624-4326 or 517-373-3077

www.michigan.gov/oco

Summary

Understanding the legal relationship you have with the relative child in your care is very important in guiding the decisions you make and for the well-being of your family.

Your decisions will determine what funding you and the child are eligible to receive, what services are available to you, and how long the child may remain in your custody.



Glossary of legal terms

Child welfare: A system of public and private services, designed to ensure the well-being of children by obtaining safety, permanency, and strengthening families.

Children's Protective Services (CPS): A government agency tasked with ensuring the protection of children by responding to suspected child abuse and neglect.

Custodian: A person/individual who is entrusted with caring, guarding, or having custody of a person.

Substantiated abuse/neglect: When CPS investigates a claim of abuse or neglect, they must determine if there is a preponderance of the evidence that abuse or neglect has occurred. This is a legal standard which means that there was slightly more evidence that abuse and neglect occurred than that it did not.

More information on Children's Protective Services investigation process can be found at https://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_50648---,00.html

Legal definition of mother: Someone who gives birth to the child or who adopts the child.

Legal definition of father:

- If the mother is married at the time of the child's birth, her husband is considered the legal father.
- If the biological parents are unmarried, the father is the putative father. This means that he is presumed to be the father but has no legal rights. A putative father may become the legal father by an affidavit of paternity. This is a form that the father signs under oath that affirms he is acknowledging he is the father. A putative father may also become the legal father through an establishment of paternity proceeding. This occurs when either parent asks the court to determine that the father is a legal parent. These proceedings usually involve DNA testing.

Lawyer-guardian ad litem (L-GAL): This is an attorney appointed by the court to represent the child's best interests. Sometimes the child's best interests differ from what the child wants, the L-GAL is bound to follow what is in the child's best interests.

Guardian ad litem (GAL): Unlike and LGAL, a GAL does not have to be an attorney. A GAL is still appointed by the court to evaluate and represent a child's best interest.

Probate court: This is a court that handles specific matters. Typically these are wills, trusts, estates, guardianships of minors and incapacitated adults, and conservatorships.

Guardianship Assistance Program (GAP): The purpose of guardianship assistance is to provide financial support to help achieve permanency for children who may otherwise remain in foster care until 18 years of age.

Tribal court: A court administered through self-government of an American Indian tribe (especially on a reservation) having federally prescribed jurisdiction over cases that involve tribal children. These include but are not limited to adoption and custody cases.

Circuit court: Circuit court in Michigan covers general jurisdiction, including civil cases, felony criminal cases, and the family division, which includes divorce, adoptions, paternity, personal protection orders, emancipation of minors, name changes, juvenile offenses, delinquency, child abuse/neglect, child support, child custody, and parenting time.

Legal relationship: A relationship that is legally recognized such as marriage, guardianship, and adoption.

Legal rights: A power held by the general public as a result of the Constitution of the United States, a statute, regulations, or precedent.

Foster care: A system in which a minor child has been removed from biological parents due to confirmation of abuse or neglect, and placed in a relative's home, private home, or group home.

Foster care license: An individual or family that is approved by the state to provide care for children. Licensed individuals and families are able to meet the basic standards of safety and are able to offer a healthy and nurturing home environment.

More information on how to obtain a foster care license can be found at https://www.michigan.gov/mdhhs/0,5885,7-339-73971_7117---,00.html

Annual guardianship review:

- **Child** - A guardianship review for a minor child is a personal investigation, reviewed by the court annually for minors under the age of 6.
- **Adult** - A guardianship review for an adult is a personal investigation conducted on the anniversary of appointment and every three years after.

Child custody order: This is a decision made by the court as to who must care for the child.

Established custodial environment (ECE) (permanent home): An ECE exists if over an appropriate amount of time a minor child looks to the custodian in that environment for guidance, discipline, necessities of life, and comfort.

Child Custody Act of 1970: An act to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts.

More information on the **Child Custody Act of 1970** can be found at <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-91-of-1970.pdf>

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