

# Modernizing Minor Guardianship in State Courts

BY MIKE HARTMAN

More than 4% of all children live in kinship care arrangements, where relatives are responsible for children who may or may not have a living biological parent.

One such arrangement is commonly known as minor guardianship, where caregivers can petition state civil courts to obtain legal rights and responsibilities over a minor child with varied involvement from the public child welfare system.

Over the past decade, national efforts have focused on reducing the number of children involved in the public child welfare system through prevention, incentivized kinship care arrangements and other more promising and less traumatic strategies. Additionally, national crises have exacerbated the need for alternative caregiving: over 5.2 million children are estimated to have lost parents due to the COVID-19 pandemic and 240,000 children have lost parents due to the opioid epidemic. Despite this growing attention and need, little is known about the experiences of kinship families, particularly as they navigate state probate, juvenile and family courts.

Many procedures and processes related to private guardianship cases are cumbersome, confusing and inefficient. Caregivers and children often find themselves navigating an archaic legal system, without legal or financial support, just to complete simple tasks like enrolling a child in school or taking them to the doctor. However, several state legislatures are leading the work to update their states' minor guardianship systems to accommodate the increase in usage and rethink the intersections of child welfare and the judiciary.

## What is Minor or Child Guardianship?

The history of minor guardianship proceedings can be traced back to how courts handled the estate of a deceased person, which included the care of orphaned children. This is why several state judicial branches still situate these cases within probate courts and divisions along with adult or incapacitated person guardianships. However, the circumstances in which minor guardianship processes are being used today have changed. The modern minor guardianship proceed-



ing has transformed into a private child welfare process where an individual can petition to be appointed legal guardian of a child if the child's parents are deceased or unable to function in the role of parent due to illness, incarceration, abuse, abandonment or other circumstances. Once guardianship is established, the guardian is granted the decision-making rights and responsibilities over the custody and care of a child, equivalent to that of a parent.

It is important to note that minor guardianship proceedings differ from state dependency and adoption proceedings. Dependency proceedings—sometimes referred to as child abuse and neglect cases—are initiated by state child welfare agencies on behalf of a child, whereas a minor guardianship proceeding can be initiated independently by private parties, usually relatives. Differences between minor guardianship and adoption are nuanced regarding the rights of the parent. Parental rights over the child, such as visitation, are often maintained under guardianship arrangements but terminated during adoptions. For more information on the differences between guardianship and adoption, see Generation United's [National Comparison Chart](#).

Depending on the state, minor guardianship proceedings can be heard by judges in probate, juvenile or family court. Many recent reforms focus on which courts are best equipped to have jurisdiction over minor guardianship cases and children and families more broadly. One approach is for states to place minor guardianship proceedings within the jurisdiction of juvenile or family courts, which have existing relationships with the state child welfare agencies and expanded access to social work and legal resources. Another approach continues to group adult and minor guardianship cases in probate courts and focuses on improving court processes and access to resources, making these proceedings more efficient for caregivers navigating the system and equitable for minors and adults in need of protection.

State policies surrounding minor guardianship laws can vary significantly on issues such as who may petition the court for guardianship, who needs to be notified about the proceeding and how. In addition, states employ different terms to refer to the same proceeding. For example, Louisiana refers to the guardian relationship as a “tutorship,” Delaware as “guardianship of a child,” New Mexico as “kinship legal guardianship” and Texas as “non-parent custody.”

## State Actions to Reform Minor Guardianship

The dual ramifications of COVID-19 and the opioid epidemic have accelerated the potential need for minor guardianship proceedings and exerted pressure on courts and legislatures to modernize the laws and processes that govern these cases and are the root issue of kinship care.

Several states, including Iowa, Washington, Mississippi, Maine and North Dakota, have recently used legislation to transform how minor guardianship cases are handled. Many of the reforms are intended to modernize how courts handle these cases or provide similar resources to private guardians that are afforded to children and caregivers involved with the public child welfare system. Some states have enacted large reform bills and are now passing legislation to tighten up remaining technical issues.

In 2019, Iowa passed the [Iowa Minor Guardianship Proceedings Act](#). The act modernized minor guardianship by moving the proceeding out of probate courts into juvenile courts. Additionally, the law requires background checks for proposed guardians and provides for court-appointed counsel for some parents and minors. Minors can be appointed counsel in a guardianship proceeding if the court determines the interests of the minor may be inadequately represented. In contrast, parents shall have counsel appointed only if the parent objects to the petition for guardianship, requests an attorney, and the court determines that the parent is unable to pay for an attorney.

Similarly, North Dakota recently made some changes by moving a minor guardianship proceeding where a child welfare finding is made from probate court to juvenile court. However, North Dakota’s judiciary probate division will retain guardianship jurisdiction in cases

## Did You Know?

According to reports, there could be more than 2 million children who are being cared for by relatives or guardians outside of the child welfare system throughout the United States.

At least 30 states have statutory provisions allowing probate courts to appoint a guardian for a minor who has a living biological parent.

There are usually three types of guardianship. An emergency guardianship can last up to 60 days, a temporary guardianship can last up to six months and a permanent guardianship can last until the child turns 18.

## Additional Resources

■ [Keeping It in the Family: Minor Guardianship as Private Child Protection](#), Deirdre M. Smith, University of Maine School of Law (Last revised 2020).

■ [Kinship Care Landing Page](#) by the Annie E. Casey Foundation.

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when both parents are deceased, and a will establishes the parents’ desire for who will take guardianship. The state requires background checks for potential guardians and an in-person hearing unless all living parents of the child consent in writing to the appointment, are deceased or have had their parental rights terminated by court order.

In comparison, in 2020, Washington enacted a law based on the Uniform Law Commission’s [Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act](#) (UGCOPPA). The act takes a different approach from Iowa by instead focusing on modernizing both adult and minor guardianships as one case type within the jurisdiction of probate courts. Maine has also adopted the UGCOPPA with select amendments.

In 2019, the Mississippi Legislature enacted [Senate Bill 2828](#) based on recommendations made by the [Commission on Guardianship and Conservatorship](#), which was established by the Mississippi Supreme Court in 2017. With Senate Bill 2828, the legislature integrated minor and adult guardianship reforms as Washington and Maine did. The commission, “made recommendations to create a clear and workable statutory framework, modern and enforceable reporting requirements, comprehensive court monitoring procedures, state-driven accountability measures, protection of the ward’s fundamental rights, and transparency from all parties.” This was the first major reform of guardianship laws in Mississippi since 1972.