



**Bridging
Systems:
Understanding
Guardianship
Across Courts,
DCYF &
Communities**

Geene Delaplane, Department of
Children, Youth, and Families

Celeste Miller, King County Bar
Association

Hannah Gold, King County
Department of Public Defense

Renee Watkins, Washington State
Attorney General's Office

Marci Comeau, Washington State
Office of Public Defense



TWO TYPES OF GUARDIANSHIP

Title 11 Minor
Guardianship
(formerly non-
parental custody)

Title 13
Dependency
Guardianship

+

•

○

What is a minor guardian?

- RCW 11.130.010 - a person appointed by the court to make decisions with respect to the personal affairs of [a minor]. The term includes a co-guardian but does not include a guardian ad litem.
- Not a biological or legal parent
- Limited or full guardianship

Guardianship of a Minor – RCW 11.130

Immediate Guardianship

- If the proposed guardian cannot wait until the Emergency Minor Guardianship Hearing
- Ex Parte Docket
- Filed at the same time as the Emergency Guardianship
- Within 48 hours to parents and child if 12 and older.
- Typically, last 5 days or until the Emergency guardianship hearing can occur.

Emergency Guardianship

- A guardian for a minor on a temporary basis.
- Will likely to prevent substantial harm to the minor's health, safety, or welfare, and no other person appears to have authority and willingness to act in the circumstances
- Takes about 2 weeks to have a case to be heard by a judge – depending on local .
- Temporary - 60 days and may be extended once for another 60 days.

Guardianship of a Minor

- One of the following:
 - Each parent of the minor agrees after being informed about what a guardianship means; or
 - All parental rights have been terminated; or
 - There is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004.

Standby Guardianship

- A court can appoint a standby guardian for a minor if the parent or someone the parent wants to be the guardian petitions (asks) the court.
- The court must find that within two years no parent will be able or willing to perform parenting functions.

Title 13 Guardianship

- Legal status in which the parents' rights to exercise physical and legal control over a child are suspended and an appropriate individual (guardian) is appointed by the courts to fulfill the parents' responsibility.
- Specifically for dependent children
- Any party to a dependency proceeding can file a petition
- Requires the petitioner to prove six elements by a preponderance of the evidence *and* that guardianship is in the child's best interest. RCW 13.36.040(2)(a), (c)(i)—(vi)
- Guardian must be:
 - 21 or older
 - May be eligible for the Guardianship Assistance program (GAP) if they meet all other eligibility requirements.

Comparison of
13.36 and
11.130
Guardianships

	13.36 Guardianship	11.130 Guardianship
What type of law is it?	<ul style="list-style-type: none"> • Juvenile Law • RCW 13.36 • There must already be an open dependency case involving the child. 	<ul style="list-style-type: none"> • Guardianship Law • Article 2 of RCW 11.130
Who can file the case for guardianship?	Any party to a dependency proceeding (state, parent, dependent child who is 12 or older, etc).	<ul style="list-style-type: none"> • A child who seeks a guardian. • The person who wants to be the guardian for the child. • A person who believes the child needs a guardian, and who is requesting somebody else to be the actual guardian.
Where is the case filed?	Juvenile court in the county where the dependency case is already open.	<ul style="list-style-type: none"> • Superior Court in the county where the child lives. • Dependency Court where the case resides.

Comparison of
13.36 and
11.130
Guardianships

	13.36 Guardianship	11.130 Guardianship
What has to be proven to establish guardianship?	<p>It is in the child’s best interests to establish a guardianship, rather than to terminate parental rights and proceed with adoption or to reunify the child with parents, AND</p> <p>1) All parties agree to the guardianship and the proposed guardian is qualified, OR</p> <p>2) the child is a dependent child, has been removed from the parent for at least six months following the filing of a dependency case, the services ordered for parents have been offered and or provided, there is little likelihood that conditions will be remedied.</p>	<p>Under RCW 11.130.215, the court must find that the guardianship is in the best interest of the child and the parents agree, or the parent’s rights were terminated, or <u>no parent is willing or able to perform parenting functions.</u></p>

Comparison of
13.36 and
11.130
Guardianships

	13.36 Guardianship	11.130 Guardianship
Does the guardian need to complete background checks?	<ul style="list-style-type: none"> The proposed guardian must meet the minimum requirements to care for children as established by DCYF under RCW 74.15.030. 	<ul style="list-style-type: none"> Guardianship case – yes – (11.130.210) that says "before entering a final order" the court must have the WSP and the DCYF background checks to mean a final regular guardianship order Emergency guardianship case, the court must check the JIS (judicial information system) for anything relevant to child safety. When used in the dependency process the proposed guardian must meet the minimum requirements to care for children as established by DCYF under RCW 74.15.030.

Comparison of
13.36 and
11.130
Guardianships

	13.36 Guardianship	11.130 Guardianship
Does Indian Child Welfare apply?	Yes. Every order or decree under this law must state whether the child is an Indian child or not and if ICWA applies.	<ul style="list-style-type: none"> • Yes. Every order or decree under this law must state whether the child is an Indian child or not and if ICWA applies.
Do parental rights get terminated?	<ul style="list-style-type: none"> • No - Parental rights are not required to be terminated. • Although the parent continues to be the legal parent, the guardian has full care, custody, and control of the child. 	<ul style="list-style-type: none"> • No - Parental rights are not required to be terminated. • Full authority can be granted - parent continues to be the legal parent, the guardian has full care, custody, and control of the child. • In some cases parents may retain rights such as decision making for education. The order will not these. • Child support may be ordered of parents.

Title 11 Guardianship as a Prevention Tool Before the Filing of a Dependency Petition: Pros and Cons



Guardianships in the Pre-Filing Space: Parent Perspective

- 3 Pre-filing legal representation programs that cover six counties: King, Snohomish, Whatcom, Skagit, Yakima, and Kittitas
- Pre-filing legal representation works with pregnant parents and parents of newborns
- Agreed guardianships provide early resolution for parents and their families

Guardianships in Pre-Filing Space – Parent Perspective

- Pre-filing attorneys will work with parents and family to come to agreed guardianship terms, or pre-filing attorneys will direct guardians to resources so guardians can file
- Pre-filing legal representation programs work with parents and family to make connections with treatment resources and concrete goods prior to case closure.
- Parents do not have access to ongoing services through dependency case.

Title 11 Guardianship as a Prevention Tool: Caregiver Perspective

Pros:

- Child will not be in “the system”
- More control and access to the case
- Keeps decisions in the family
- Easier to change guardians or end guardianship
- No home study (but background checks are still required)

Cons:

- Less financial support
- Less state-funded services for children and parents
- Difficult and stressful to be the petitioner
- Burden on caregiver to file if there is an extreme safety issue
- Confusion about which type to file and what the caregiver must prove to be named guardian.

Pro: Child will not be in “the system”

- minimizes state involvement with a family.
- No licensing or foster care requirements.
- Case moves through court without DCYF

Pro: Caregiver has more control and access to the case

- Will be a party to the case, with more rights in court, including:
- may hire an attorney or seek help from legal aid.
- access court records easily and file motions, advocate for themselves.
- negotiate directly with parents (or parents' attorneys)

Con: Less Financial Support

- Title 11 guardians outside of the DCYF system **are not eligible** for foster care payments or guardianship payments (GAP).
- They can apply for Child-Only TANF on behalf of the child, but it is significantly less per month.

Con: Less state-funded services for children and parents

- Children not eligible for supports that foster children have access to, such as Treehouse.
- Parents can be ordered to do treatment or counseling, but those services are not provided by the state in a Title 11 case.
- Parents and children do not have caseworkers that may help them access resources.

Pro: keeps decisions in the family

- Families can agree on guardianship and set it up quickly
- Families can agree to end the guardianship without getting state approval
- A guardian can decline to ask for child support

Pro: easier to change guardians or end the guardianship

- Changing guardians is simpler and does not require DCYF oversight.
- Guardian can access all court records and file to change to a new guardian.

Con: Difficult and stressful to be the petitioner

- Caregivers are often the petitioner and cannot afford an attorney, whereas parents and minors 12 and older often have appointed counsel.
- Service and notice requirements are burdensome.
- Cases are costly financially, emotionally, and take up lots of time.

Con: Burden on caregiver to file if there is an extreme safety issue

- If the child is unsafe, and DCYF is not involved, it falls to the petitioner to file an immediate emergency guardianship.
- The paperwork is complex and the filing process is confusing.
- No guarantee of success.

Pro: No home study (but background checks are still required)

- For Title 11 guardianship, the proposed guardian does not have to complete a home study or pass DCYF licensing background checks.
- They must provide a Washington State Patrol background check.
- They must agree to a DCYF records check for themselves and all adults in their household.

Con: Confusion about which type to file and what the caregiver must prove to be named guardian.

- Caregivers have filed emergency guardianships that only last 60 days instead of regular long-term guardianships due to lack of information.
- There are long-term guardianships, emergency guardianships, immediate emergency guardianships, long-term guardianship with a motion for emergency guardianship, etc. It is very confusing, especially when the caregiver feels pressure to move quickly.
- Petitioners must prove that parents are not “willing or able” to exercise parenting functions with **clear and convincing evidence**. This is a high burden of proof and can be difficult to achieve at a contested hearing.

**Considering
Guardianship Prior to
Filing Termination of
Parental Rights Petition**

HB 1747: Child Welfare Proceedings – Relative Placements

- Effective June 9, 2022
- Amends RCW 13.34.145 (permanency planning hearing statute)
- Amends RCW 13.34.180 and .210 (termination of parental rights statutes)
- Amends RCW 74.13.062 (guardianship eligibility statute)

Obligation to discuss guardianship as alternative to termination

Court may find GOOD CAUSE not to order termination petition to be filed if Department has not yet “met with the caregiver...to discuss guardianship as an alternative to adoption or the court has determined that guardianship is an appropriate permanent plan.” RCW 13.34.145(5)(a)(vii).

If child has resided in home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall instruct the Department to discuss guardianship as a permanent option for the child with the parents and the caregiver. RCW 13.34.145(7)(b).

Considering guardianship at termination trial

- Under RCW 13.34.180(1)(f) (continuation of parent-child relationship): Court must consider efforts taken by the Department to support a guardianship and whether guardianship is available as a permanent option for the child.

Under RCW 13.34.180(5), when a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life, and it is in the best interest of the child, the Department should consider a permanent placement that allows the parent to maintain a relationship with the child, such as a guardianship.

Guardianship as a Permanent Option

Why choose a guardianship?

- Can get an emergency order (Title 11 only)
- Can be temporary or permanent
- Allows for a parent-child relationship, but can set conditions on contact
- Can be modified as circumstances change
- Grants legal backing to someone already acting as caregiver
- Provides security and permanency for child
- Can prevent (Title 11 only) or eliminate need for CPS/DCYF involvement

Guardianships come with significant benefits

- Financial support
 - ✓ GAP (Title 13 and some Title 11)
 - ✓ TANF
- [EBT card freebies galore](#)
- Medicaid
- FAFSA does not count guardian's income
- WA PFMLA, maybe FMLA (employer-dependent)
- Daycare dependent upon eligibility requirements (WAC 110-15-0020)

But is Guardianship really “permanent?”

YES! RCW 13.34.145 says so, and the Court says so.

Plus, terminating a guardianship is difficult.

RCW 13.36 Guardianship:

Requires agreement or “substantial change has occurred in the circumstances *of the child or the guardian* and that termination of the guardianship is necessary to serve the best interests of the child.”

RCW 11.130 Guardianship:

Requires finding that the basis for appointment of a guardian no longer exists, unless the court finds that:

- (i) Termination of the guardianship would be *harmful to the minor*; and
- (ii) The *minor's interest in the continuation of the guardianship outweighs the interest of any parent* of the minor in restoration of the parent's right to make decisions for the minor.

Now... some issues to keep in mind

If the guardian dies without a co-guardian, custody reverts back to the parents

Parents are next of kin when child is 18 and guardianship dissolves

Child will not automatically inherit from guardian

Guardian can't make *some* major legal decisions without parental approval

If you get TANF, the state collects child support from the parents

Relocation notifications

The guardianship paperwork gives the parents significant personal info about the guardian

Can travel internationally, can get passport, can claim child on your taxes, etc.



On a day to day basis, guardianship looks the same as an adoption.

Minor guardianships are designed to be permanent.



Legal Resources and Procedural Guidance

Helpful Resources

- Washington Law Help: <https://www.washingtonlawhelp.org/resource/file-a-minor-guardianship-petition>
- Self-Help Portal Guardianship Page: <https://www.courts.wa.gov/self-help/guardianship/>
- LAARK Resources and Publications Page, with information about 11.130 minor guardianship, power of attorney, a little about 13.36 guardianship, and other legal resources. <https://www.kcba.org/?pg=LAARK-Publications-and-Resources>
- Washington Law Help Child Guardianship Page, with a forms generating survey: <https://www.washingtonlawhelp.org/topics/family/child-guardianship>
- King County Law Library presentation on minor guardianships: <https://kcll.org/category/videos/video-guardianship/> 4/19/2023
- King County guardianship instructions: <https://kingcounty.gov/en/court/superior-court/courts-jails-legal-system/ex-parte-probate/guardianship/minor-guardianships>
- Washington Court Forms for Minor Guardianship: <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=141>
- KCBA Kinship Care Solutions: <https://www.kcba.org/?pg=Kinship-Care-Solutions>
- Family Law Facilitators or similar court staff may be able to assist

Helpful Resources

- Title 11 Minor Guardianship Bench Book Chapter: <https://fyjp.org/benchbook/chapter-31-title-11-minor-guardianship/>
- Title 13 Guardianship Bench Book Chapter: <https://fyjp.org/benchbook/chapter-21-title-13-guardianship/>
- 2021 Overview of WA Uniform Guardianship Act for Kinship Caregivers Kinship Care Legal Aid Coordinator: <https://www.youtube.com/watch?v=9esUo48-aXg>
- DCYF Permanency Planning Matrix: https://www.dcyf.wa.gov/sites/default/files/pubs/CWP_0088.pdf
- Kinship Care Legal Aid Coordinator Videos: <https://www.youtube.com/@kinshipcarelegalaidcoordin1824>
- Webinar - An Introduction to Minor Guardianship (9/17/2021) King County Law Library: https://www.youtube.com/watch?v=BG4JE4d_22g
- Webinar - Minor Guardianships (4/19/2023) King County Law Library: www.youtube.com/watch?v=do1lERaPkQE
- Webinar - Washington's 2021 Minor Guardianship Law Beresford Booth: www.youtube.com/watch?v=AjtUiHEMloc
- Many counties have local resources and instructions available online

Thank you!

Geene Delaplane, DCYF,
geene.delaplane@dcyf.wa.gov

Celeste Miller, KCBA, celestem@kcba.org

Hannah Gold, King County DPD,
hannah.gold@kingcounty.gov

Renee Watkins, Washington State AGO,
renee.watkins@atg.wa.gov

Marci Comeau, Washington State OPD,
marci.comeau@opd.wa.gov

**NEXT TRAINING IN
GUARDIANSHIP SERIES:**

**February 19, 2026
12:00 P.M.**

**“Practical Navigation and
Support Systems”**