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Juvenile Court Guardianships in Delinquency Court: A Quick Guide

Under what authority does the juvenile delinquency court have the ability to make a legal guardianship?

Proceedings for the appointment of a legal guardian for a child who is a ward of the juvenile court (under section 725(b)) may be held in the juvenile court under the procedures specified in section 366.26. See [CRC 5.815\(a\)](#).



Under [WIC 728\(c\)](#), “If, at any time during the period a minor under the age of 18 years is a ward of the juvenile court, the probation officer supervising the minor recommends to the court that the court establish a guardianship of the person of the minor and appoint a specific adult to act as guardian, or on the motion of the minor’s attorney, or on the order of the court that a guardianship shall be established as the minor’s permanent plan pursuant to paragraph (4) of subdivision (b) of Section 727.3, the court shall set a hearing to consider the recommendation or motion and shall order the clerk to notice the minor’s parents and relatives as required in Section 294. If the motion is not made by the minor’s attorney, the court may appoint the district attorney or county counsel to prosecute the action.”

Who starts the process?

There are multiple options: ***ONLY 1 IS REQUIRED***

- **Probation.** Every ward of the court must have a permanency planning hearing within 12 months of entry into foster care and then periodically thereafter. [WIC 727.2](#); [WIC 727.3](#). Before each permanency planning hearing, Probation must prepare a social study report including an updated case plan and a recommendation for a permanent plan, pursuant to [WIC 706.6\(c\) and \(d\)](#). One of the recommended permanent plans may be legal guardianship. See [CRC 5.810](#).
- **The child’s attorney.** Under [WIC 728\(c\)](#), the child’s attorney can file a WIC 778 motion or file a motion citing [WIC 728\(c\)](#) to establish a guardianship.
- **The court.** At any regularly scheduled and noticed status review hearing, permanency hearing, or in response to a WIC 778 petition, the court can make a change in the permanent plan pursuant to the rules in [WIC 727.3](#). The court can make its own order to set a guardianship hearing.



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What forms are needed to start the process? (See **Index** for links to forms)

- The probation department and/or child's attorney may use a [JV-600](#) to request that a guardianship hearing be set. See [CRC 5.815\(b\) and \(c\)](#). The [JV-740](#) would request that the judge modify the permanent plan by making an order for the proposed guardian to have guardianship of the person over the minor.
- The court can make its own order changing the permanent plan pursuant to [WIC 727.3](#) and set a guardianship hearing. The court could use the [JV-674](#) (findings and orders after permanency hearing) or [JV-678](#) (findings and orders after postpermanency hearing) depending on what stage the case is at. See [CRC 5.810](#).

What happens after Probation, Child's Attorney, or the Court itself requests guardianship?

The court must set a hearing to consider the establishment of a legal guardianship, taking into account the notice requirements described below. The court then must order the probation department to prepare an assessment that includes:

1. A review of the existing relationship between the child and the proposed guardian;
2. A summary of the child's medical, developmental, educational, mental, and emotional status;
3. A social history of the proposed guardian, including a screening for criminal records and any prior referrals for child abuse or neglect;
4. An assessment of the ability of the proposed guardian to meet the child's needs and the proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship; and
5. A statement confirming that the proposed guardian has been provided with a copy of the [JV-350](#) Guardianship Pamphlet.

See [CRC 5.815\(b\)](#).

Does Probation need to help with Kin-GAP paperwork before the guardianship hearing?

Yes. Relatives who become legal guardians through juvenile court (as opposed to probate court) are eligible for state or federal Kin-GAP if certain requirements are met. The state Kin-GAP regulations are in [WIC 11360-11379](#) and the federal Kin-GAP requirements are in [WIC 11385-11393](#). The following must be true for federal Kin-GAP to attach in wardship cases:

1. Youth must meet age requirements (generally under 18);
2. Youth has been a ward of the juvenile court;



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3. Youth has been living with the same approved relative caregiver (who is the proposed relative guardian) for at least 6 consecutive months*;
4. The relative/proposed guardian must have entered into a written binding agreement (forms [SOC 369](#) and [SOC 369A](#)) containing the terms and conditions of the guardianship with the probation department prior to becoming the legal guardian;
 - a. if a relative guardian fails to negotiate a written binding agreement prior to the establishment of the guardianship and the child still meets all other eligibility criteria, the child is only eligible for state-funded Kin-GAP
5. The juvenile court must establish relative guardianship as the result of a permanent plan; and/or,
6. Youth must have his or her wardship terminated concurrently or subsequently to the establishment of the kinship guardianship.

Some important points here.

- First, the caregiver and probation must sign the [SOC 369](#) and [SOC 369A](#) prior to the caregiver being appointed as legal guardian.
- Second, the wardship must not be terminated before the guardianship is established - wardship should either be terminated concurrently with the guardianship being established, or terminated after the guardianship is established. If the relative is otherwise receiving foster care benefits, they remain eligible to receive those benefits until wardship is terminated.
- Finally, Kin-GAP can't start until wardship has been terminated. In theory, there should not be a gap in benefits for the relative caregiver, because they should have been receiving foster care funding while caring for the ward, and once the wardship is terminated they should begin receiving Kin-GAP. [ACL 11-15.](#)

Taking all of these things into account, the most straightforward scenario for the youth and caregiver may be to issue the letters of guardianship and terminate wardship at the same hearing.

See [ACL 11-15](#) for state and/or federal requirements.

For more information about Kin-GAP, please see CDSS's website:
<https://www.cdss.ca.gov/inforesources/foster-care/kinship-guardianship-assistance>



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And reach out to CDSS for help:

Foster Caregiver Policy and Support Unit
744 P Street, MS 8-13-78
Sacramento, CA 95814
(916) 651-7465

Funding & Eligibility Unit Foster Care Audits
and Rates Branch
744 P Street, MS 20-38
Sacramento, CA 95814
(916) 324-4873



Who must receive notice of the hearing? How much time is required for notice?

The clerk must provide notice of the guardianship hearing to the child, the child's parents, and other individuals as required by WIC 294. This includes any tribal notice that is required under ICWA. Any person notified may attend all hearings and may submit any information he or she deems relevant to the court in writing. [WIC 294\(a\)](#).

The appropriate form for notice in California is [JV-300](#) "Notice of Hearing on Selection of a Permanent Plan."

The notice requirements are probably the trickiest part of this entire process, so probation, the children's attorneys, the court, and the clerks will all want to be familiar with the required steps.

Service of the notice shall be completed at least 45 days before the hearing date. Service is deemed complete at the time the notice is personally delivered to the person named in the notice or 10 days after the notice has been placed in the mail or sent by electronic mail, or at the expiration of the time prescribed by the order for publication. [WIC 294\(c\)](#). If the recommendation of the probation officer is legal guardianship, service may be made by first-class mail to the parent's usual place of residence or business or by electronic service pursuant to Section 212.5.

What happens at the hearing?

The court must read and consider the assessment prepared by the probation officer and any other evidence. The preparer of the assessment (i.e. the probation officer)



must be available for examination by the court or any party to the proceedings. [CRC 5.815\(e\)](#).

Under [WIC 728\(d\)](#), “the procedures for appointment of a guardian shall be conducted exclusively pursuant to Section 366.26, except that subdivision (j) of Section 366.26 shall not apply.” [WIC 366.26](#) is the statute governing permanency planning hearings in dependency court. Accordingly, dependency practice guides such as the Dogbook may be of use: <https://www.courts.ca.gov/documents/dogbook.pdf>.

Parents have the right to appointed counsel at WIC 366.26 hearings. If they are unable to afford counsel, the court must appoint counsel for the parents unless that right is knowingly and voluntarily waived. [WIC 366.26\(f\)](#). The public defender or private counsel may be appointed as counsel for the parent, but the same counsel cannot be appointed for both child and parent.

At the hearing, the court shall:

- Review probation’s report and indicate that it has read and considered it, and receive other evidence that the parties may present;
- Make findings that termination of parental rights and adoption of the child is not in the best interest of the child for the enumerated reasons;
- Make findings that the proposed guardian is a suitable guardian and that it is in the best interest of the child to place the child in a guardianship with the proposed guardian;
- Make findings that guardianship is the appropriate permanent plan, appoint the legal guardian, and issue letters of guardianship;
- Make visitation orders with the parents or guardians unless the court finds by a preponderance of the evidence that visitation would be detrimental to the physical or emotional well-being of the child.

The court may use [JV-320](#) for its finding and orders.

The court must then order the clerk to issue [JV-330](#) letters of guardianship. The letters of guardianship must be signed by the guardian before they can be “issued” by the clerk. Given that the proposed guardian cannot sign the letters of guardianship in person currently, the clerk should allow the proposed guardian to submit pre-signed and prepared JV-330 forms prior to the hearing, for issuance after the hearing. The children’s attorneys should facilitate ensuring that these forms are all properly signed and submitted.



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What happens after the hearing?

Any petitions to terminate or modify the juvenile court guardianship, or to appoint a co-guardian or successor guardian, must be filed and heard in juvenile court.

What benefits will the caregiver receive, and for how long?

The Kin-GAP payment rates for 2021 are contained in [ACL 20-78](#). The standard monthly rate is \$1,037 and benefits continue until age 18 or 19 for students completing high school. However, there are two scenarios where Kin-GAP benefits extend until age 21:

1. The child/youth has a documented mental or physical disability that warrants the continuation of assistance; or,
 2. The Kin-GAP payments began after the youth attained 16 years of age, AND, the youth meets one of the five participation criteria stated in WIC 11403(b). These are the same as the AB12 participation criteria.
- Guardians should be advised to ask about extended Kin-GAP before the youth turns 18.
 - The youth may be eligible for additional rates like SCI, infant supplement, dual agency rate, etc.

See [ACL 11-86](#) for more information.

What happens if the guardianship falls through?

If the youth is still a minor, the juvenile court can resume jurisdiction. Probation should notify the court that the caregiver ceased providing support.

If the youth is over 18 years old AND their guardian received extended Kin-GAP after they turned 18 (see above), AND the guardian stops providing support to the youth and/or the guardian dies, and the youth stops receiving Kin-GAP, then the youth can petition to re-enter Extended Foster Care using the process described in WIC 388.1. See [ACL 19-31](#).



What should this process look like at a glance?

- Probation submits a report and/or the child's attorney files a motion recommending a change of permanent plan to a guardianship, and/or the court makes its own order changing the permanent plan at a hearing pursuant to [WIC 727.3](#);
- The court sets a hearing to consider the selection of guardianship as the minor's permanent plan;
- The court orders the clerk to serve notice to the appropriate parties at least 45 days before the hearing, pursuant to [WIC 294](#) - if all parties have known addresses, service is deemed complete 10 days after mailing;
- Probation completes a report containing the information described in [CRC 5.815\(b\)](#) and gives the proposed guardian the [JV-350](#) packet;
- Probation and proposed guardian complete the [SOC 369](#) and [SOC 369A](#);
- Probation officer who completed report appears at the guardianship hearing in case testimony is needed;
- Children's attorney ensures that [JV-330](#) letters of guardianship are prepared and signed by appropriate parties and submitted to the court before the hearing, in preparation for them to be issued after the guardianship order is made;
- At guardianship hearing, the court reviews report and other evidence, makes appropriate findings, and orders the clerk to prepare [JV-330](#) letters of guardianship;
- The court either terminates wardship at the same hearing as ordering guardianship, or terminates wardship after ordering guardianship;
- At such time as wardship is terminated, legal guardian begins receiving Kin-GAP.



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Index of Resources

Court Rules and WIC Codes

1. [California Rule of Court 5.815](#)
2. [California Rule of Court 5.810](#)
3. [Welfare and Institutions Code section 728](#)
4. [Welfare and Institutions Code section 727.2](#)
5. [Welfare and Institutions Code section 727.3](#)
6. [Welfare and Institutions Code section 294](#)
7. [Welfare and Institutions Code section 706.6](#)
8. [Welfare and Institutions Code section 366.26](#)
9. [Welfare and Institutions Code sections 11360-11379](#)
10. [Welfare and Institutions Code sections 11385-11393](#)

Court Forms

1. [JV-600](#)
2. [JV-740](#)
3. [JV-674](#)
4. [JV-678](#)
5. [JV-350](#)
6. [JV-300](#)
7. [JV-320](#)
8. [JV-330](#)
9. [SOC 369](#)
10. [SOC 369A](#)

All County Letters

1. [ACL 11-15](#)
2. [ACL 20-78](#)
3. [ACL 11-86](#)
4. [ACL 19-31](#)

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