CHART Adoption and Guardianship for Children in Kinship Foster Care: Comparison Chart for Washington State

This chart is designed to help kinship foster parents compare adoption and guardianship as two options that you and the children in your care can pursue to exit foster care and create permanent families. It provides some Washington State specific information on these legal pathways for exiting foster care, including two guardianship options available in Washington: "Title 13" guardianship and "minor guardianship." The guardianship known as Title 13 is more common for those kinship families exiting foster care, and is the only guardianship option that has the possibility of coming with monthly subsidies, known as R-GAP (Relative-Guardianship Assistance Program). However, some families may exit foster care with "minor guardianship," so differences among the two options are noted throughout the chart.

While this chart is directed at kinship foster parents, it is also intended as a tool to help child welfare and other case workers assist kinship foster parents. Birth parents and older children may also find it helpful to review as part of their decision-making.

Generations United created this chart in collaboration with the King County Bar Association. It is developed from Generations United's National Comparison Chart and accompanying brief on Adoption and Guardianship for Children in Kinship Foster Care, which are available at www.grandfamilies.org. The content on this chart should not be considered legal advice, but rather general information to help guide your decision. Anyone considering adoption or guardianship should consult with their case worker and a local legal professional.

RIGHTS AND RESPONSIBILITIES		
	ADOPTION	**GUARDIANSHIP**
What are my legal rights and responsibilities for the child?	You will become the parent in the eyes of the law forever. You have all rights and responsibilities for the child.	You will have most of the rights and responsibilities that come with caring for a child until the child reaches adulthood or the guardianship ends.
What are the birth parents' rights and responsibilities for the child?	The birth parents' rights are forever terminated.	Birth parents keep the rights to visit the child and to consent to adoption and/or name change. Birth parents keep the obligation to financially support the child and pay child support.

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RIGHTS AND RESPONSIBILITIES		
	ADOPTION	**GUARDIANSHIP**
Do I have authority to access services for the child?	As an adoptive parent, access to services for the child is the same as for any birth parent.	As a guardian, access to services for the child is typically the same as for any birth parent.
Can the child visit their birth parents?	You will have the right to determine whether the child visits their birth parents. You may have an agreement in place as part of the adoption, and you should follow that. If you don't follow it, your adoption will not be invalidated but the birth parents may request a court hearing.	The birth parents typically keep their right to visit the child. The court awarding guardianship often sets up terms for that visitation, which you must follow. You may have to supervise those visits.
Can I change the child's last name?	You can change the child's last name as part of the adoption process.	You cannot change the child's last name as part of the guardianship process.
Is the child welfare agency still in our lives?	Once you adopt, the child welfare agency will no longer be in your lives. If the child receives adoption assistance, you will typically need to complete a short annual form regarding the subsidy.	Once you obtain guardianship, the child welfare agency will no longer be in your lives.
Will we continue to be involved with the court?	The case will be finalized. You are now the parent.	There will not be any scheduled court hearings. However, the birth parents can go to court and ask to have the child returned to them.
Can the birth parents come back to claim the child?	Birth parents cannot come back and claim the child. Their rights and responsibilities are terminated.	Parents can seek to have either a Title 13 or minor guardianship ended and the child returned to them. They must go to court and prove that something has changed with them, the child or you as the caregiver.
Can the child end up back in foster care?	Just like any child in the United States, the child welfare agency can remove the child from you in the event of abuse or neglect. You may be able to voluntarily surrender the child back to the agency. If you are considering such a serious step, you should consult with local professionals.	Just like any child in the United States, the child welfare agency can remove the child from you in the event of abuse or neglect. You may be able to voluntarily surrender the child back to the agency. If you are considering such a serious step, you should consult with local professionals.
When does the legal relationship end?	Adoption does not end – the child is permanently part of the family.	Guardianship ends when the child reaches adulthood, which is age 18 in Washington.

FINANCIAL AND LEGAL ASSISTANCE		
	ADOPTION	**GUARDIANSHIP**
Is there financial assistance to help meet the needs of the child?	All states have adoption assistance for relatives adopting children with "special needs" from foster care. "Special needs" is defined broadly and 90 percent of all children adopted from foster care are eligible for adoption assistance. Washington has federally-funded and state-funded adoption assistance. More information can be found at: https://www.dcyf.wa.gov/services/adoption-support-program and https://www.nacac.org/help/adoption-assistance/adoption-assistance-us/state-programs/washington-adoption-assistance-program/	Federally funded guardianship assistance programs exist in about 40 states and 14 tribes. They are modeled on adoption assistance and work in a similar way. Washington has federally funded and state-funded guardianship assistance, known collectively as R-GAP, which is only available for children exiting foster care into a Title 13 guardianship. More information is available at https://www.dcyf.wa.gov/4340-guardianship/43401-relative-guardianship-assistance-program-r-gap
How much is this assistance?	The monthly dollar amount of adoption assistance cannot be more than the child received while in foster care. It will be somewhere between 80-95% of the foster care maintenance payment for that child, depending on the child's age. Washington has post-adoption supports available through Washington's Department of Children, Youth, and Families (DCYF). See https://www.dcyf.wa.gov/services/adoption-support-program	The monthly dollar amount of R-GAP assistance cannot be more than the child received while in foster care. It will be somewhere between 80-95% of the foster care maintenance payment for that child, depending on the child's age. Washington has post-guardianship supports through Washington's Department of Children, Youth, and Families (DCYF). See https://www.dcyf.wa.gov/4340-guardianship/43401-relative-guardianship-assistance-program-r-gap
How long does this assistance last?	In Washington adoption assistance payments last until age 18. Payments are available until age 21 provided that the child was adopted between the ages of 16 and 18 and meets certain other eligibility criteria. See https://www.dcyf.wa.gov/services/adoption-support-program/adoption-after-13	In Washington, R-GAP assistance payments last until age 18. Payments are available until age 21 provided that the child exited foster care to guardianship after age 16 and meets certain other eligibility criteria. See https://www.dcyf.wa.gov/4340-guardianship/43401-relative-guardianship-assistance-program-r-gap
Will I be reimbursed for my expenses to obtain the permanency option?	If you are adopting an eligible child with "special needs" from foster care under the federally- or state-funded adoption assistance program, Washington will reimburse you up to $1500 in nonrecurring expenses spent in getting the adoption. These expenses include legal fees, court filing fees, and travel costs.	Washington will reimburse successor guardians (but not the initial guardian) as part of a Title 13/R-GAP case up to $2000 in nonrecurring expenses spent in getting the guardianship. These expenses include legal fees, court filing fees, and travel costs.

	PUBLIC BENEFITS	
	ADOPTION	**GUARDIANSHIP**
Is the child eligible for free school meals?	Children adopted from foster care during the school year remain eligible for free school meals for the remainder of the school year. After that, your income is used to determine if the child is eligible.	Children who exit foster care to guardianship during the school year remain eligible for free school meals for the remainder of the school year. After that, your income is used to determine if the child is eligible.
Is the child eligible for SNAP, which used to be known as food stamps?	Your income is used to determine the household's eligibility for SNAP. The adoptive child is now part of your household. Any adoption assistance counts as income for purposes of SNAP eligibility.	You decide whether to include the child in the household for purposes of determining SNAP eligibility. If the child is included, R-GAP assistance payments count as income for purposes of determining SNAP eligibility. If you choose not to include the child in the household for SNAP eligibility, R-GAP assistance payments will not count as income, but you will not receive SNAP for the child.
Can the child receive welfare benefits under Temporary Assistance for Needy Families (TANF)?	The child's adoption assistance will be counted as income and that alone will likely disqualify the child from a TANF non-needy grant. Furthermore, TANF non-needy grants are only available to children living with parents in a few limited situations – they are mostly for children living with non-parents. Whether to include the child (and the child's income) in a TANF family-grant will depend on whether that will help the family financially or not.	The child's R-GAP assistance payments will be counted as income and will likely disqualify the child from a TANF child-only grant. Children in guardianships who do not receive R-GAP assistance will likely qualify for a TANF non-needy grant. Whether to include the child (and the child's income) in a TANF family-grant will depend on whether that will help the family financially or not.
Will the child be able to get disability or survivor Social Security benefits based on my work record?	The child may be able to get Social Security benefits based on your work record if: (1) the child is not receiving Social Security benefits from the birth parents, (2) you have already adopted the child at the time you die or become disabled, and (3) when that death or disability occurs, the child's birth parents were not living in the same household and contributing regularly to the support of	It is only possible to qualify for Social Security benefits based on your work record if the child is your grandchild. There are a number of other eligibility requirements, including that the birth parents must generally be deceased or disabled. See www.ssa.gov/people/kids/ The child remains eligible to receive any Social Security benefits based on the parents' work records.

HEALTH INSURANCE		
	ADOPTION	**GUARDIANSHIP**
Can I put the child on my private health insurance?	Your adoptive child can be put on your private health insurance just like a birth child.	Some private policies allow for the child to be included, but not all. You will need to check with your insurance carrier.
Can the child receive Medicaid?	The child you adopted from foster care is automatically eligible for Medicaid if the child is receiving federally-funded or state-funded adoption assistance.	If you obtain R-GAP assistance, the child is automatically eligible for Medicaid.
FEDERAL TAX CREDITS		
	ADOPTION	**GUARDIANSHIP**
Is there a special tax credit that can help me?	There is a federal adoption tax credit, which you can claim for up to $14,300 per child adopted in 2020 (the rate typically increases each year). You may be eligible for the maximum amount of credit regardless of whether you had any qualifying expenses. For more information on this tax credit, visit www.irs.gov/taxtopics/tc607.html and www.nacac.org/category/adoption-tax-credit/	There is no federal guardianship tax credit.
Are there any other tax credits that I can claim?	There are other tax credits that you may be able to claim, including the Earned Income Tax Credit, child tax credit, additional child tax credit, and the child and dependent care tax credit. For information, see the IRS website at www.irs.gov	There are other tax credits that you may be able to claim, including the Earned Income Tax Credit, child tax credit, additional child tax credit, and the child and dependent care tax credit. For information, see the IRS website at www.irs.gov
Are these tax credits considered "income" for purposes of determining eligibility for public benefits?	Tax credits do not count as income. This is true even if you owe no taxes and receive a refund check from the IRS.	Tax credits do not count as income. This is true even if you owe no taxes and receive a refund check from the IRS.

CAREGIVER SUCCESSOR PLANNING AND DEATH BENEFITS FOR CHILDREN		
	ADOPTION	**GUARDIANSHIP**
Can I plan for the child's care if I should die?	Like any parent, you can name a guardian in your will to take over your rights and responsibilities when you die. If the child is receiving adoption assistance payments when you die, those payments should continue to be paid to the guardian until they are scheduled to end. It may also be possible that those payments be made directly to a child age 18 or older.	You may name a successor guardian as part of your R-GAP assistance agreement. That person will be able to step in your shoes and continue to receive the monthly financial guardianship assistance. If the guardian does not receive R-GAP, the process to appoint a successor requires a petition to the court (RCW 11.130.240).
Can the child inherit from me?	As an adopted child, the child will automatically inherit from you even without a will. The child will not automatically inherit from the birth parents. However, they can share their estate through a legal document known as a will.	The child cannot automatically inherit from you, but you can create a will and share your estate that way. The child continues to be able to automatically inherit from birth parents.
Will the child be able to get my pension or military benefits when I die?	The child will be able to receive your pension and military benefits the same as a birth child. The child will no longer be able to automatically receive pension or military benefits from their birth parents.	The child will typically not be automatically able to get your pension or military benefits as they usually only pass down to a birth or adoptive child.
COLLEGE AND INDEPENDENT LIVING		
	ADOPTION	**GUARDIANSHIP**
What type of independent living or education vouchers are available for an older child?	The child is not eligible for independent living services or education and training vouchers (ETV) if adopted before age 16. If the child was adopted after age 16, the child will remain eligible and can apply. See https://www.dcyf.wa.gov/services/education-for-foster-youth/etv	The child is not eligible for independent living services or ETV if the child exited foster care to a kinship guardianship before age 16. If the child entered a kinship guardianship after age 16, the child will remain eligible and can apply. See https://www.dcyf.wa.gov/services/education-for-foster-youth/etv
How is my income used to determine the child's eligibility for financial aid for college?	Your income is considered when determining financial aid as part of the Free Application for Federal Student Aid (FAFSA). However, the child's past foster care status may be considered when determining aid. If the child was adopted at age 13 or older, the child is considered "independent" and your income does not count.	The guardian's income is not considered in determining financial aid. A child in a guardianship is typically considered "independent" and the child's past foster care status may be considered when determining aid.

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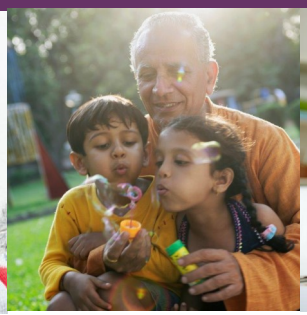
Generations United's National Center on Grandfamilies

For over twenty years, Generations United's National Center on Grandfamilies has been a leading voice for families headed by grandparents, other relatives, and close family friends. Through the Center, Generations United leads an advisory group of organizations, caregivers and youth that sets the national agenda to advance public will in support of these families. Center staff conduct federal advocacy, provide technical assistance to state-level practitioners and advocates, and train grandfamilies to advocate for themselves. The Center raises awareness about the strengths and needs of the families through media outreach, weekly communications and awareness-raising events. It offers a broad range of guides, fact sheets and tools for grandfamilies, which cover issues from education and health care access to financial and legal supports and can be found at www.gu.org and www.grandfamilies.org.

King County Bar Association (KCBA)

The Statewide Kinship Care Legal Aid Coordinator at KCBA develops legal aid resources and training materials to help pro bono and low bono attorneys provide legal advice and assistance to kinship caregivers. The Coordinator works in consultation with kinship navigators and volunteer lawyer programs to identify and develop kinship care legal aid initiatives throughout Washington, in addition to developing trainings and resources for kinship caregivers regarding the recent changes to state guardianship laws. For more information, contact Celeste Miller, Statewide Kinship Care Legal Aid Coordinator, at Celestem@kcba.org.



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