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Why Reforms in Guardianship Laws and Services Can Improve Outcomes for Children and Families in Crisis

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States must review and revise their guardianship laws to ensure that they support rather than undermine families in crisis. Over three million children — four percent of all U.S. children — are being raised by a non-parent relative, most commonly a grandparent. This often happens when a parent is facing a crisis due to substance use, homelessness, mental or other illness, or incarceration. When new arrangements are needed, very often relatives ready to provide what is called "kinship care" go to court to be appointed as the legal guardian of the children.

Guardianship laws were developed in colonial law to serve orphaned children and oversee their property. These laws fall under probate law — laws about the transfer of property upon a person's death. Today, however, very few children are orphaned and guardianships are rarely needed to ensure appropriate management of a child's property. Instead, the laws are most commonly used as a way to address a child's need for care when a living parent in crisis cannot provide care at least for a time. However, most states have not revised their guardianship statutes to reflect contemporary uses. As a result, these laws have antiquated provisions and may fail to equip courts with the authority and guidance necessary to effectively address the interests of children, their parents, and the relative caregivers appointed as guardians.

Guardianship Often Cannot Serve Long-Term Family Needs

Two distinct legal mechanisms — public child welfare and guardianship — are used in similar contexts but lead to vastly different results for families. Federal and state laws governing public child welfare make reunifying parents and children a primary goal, but minor guardianship laws have a different purpose — because guardianship authorizes a relative to act as a child's substitute parent.

Guardian appointments ensure that the relative who becomes the caregiver is able to enroll the child in school and gain access to essential services like health care. Guardianship can also ensure a degree of stability for the child by preventing a troubled parent from simply demanding to resume custody. And a guardianship appointment can enable the family to control a child's care without involving a public child welfare agency, thus reducing the chance that the child will end up in the foster care system.

But guardianship laws can be rigid. Rather than encouraging court orders that meet various, specific family needs and circumstances, these laws lead courts to appoint guardians who have complete and indefinite rights over the child's well-being, leaving no role for the parent. Broad, permanent orders make sense if a child is orphaned or the parent is otherwise permanently out of the picture, but in other circumstances they can undermine any chance for future reunification between a child and a living parent.

Although most parents in crisis consent to a guardian's appointment, they often do not realize the drastic consequences. A parent cannot resume custody of the child simply by revoking their consent, even if they have addressed the crisis that led to the appointment. Instead, if the relative does not agree to give up custody, the parent must petition the court to terminate the guardianship. This can result in contentious, emotional, and expensive litigation. Thus, overly rigid and outdated guardianship laws can result in severe and lasting costs to the families.

Reforms to Reflect Contemporary Uses

Any form of child protection — whether public or private — should preserve kinship ties, particularly the parent-child relationship, while ensuring children's safety and stability. Minor guardianship laws and

procedures must be reformed to serve this goal and ensure that they do not further harm families dealing with or recovering from crises. Specifically, guardianship today should be unlinked from probate law and reworked to enable and encourage courts to address specific family needs and facilitate possible future reunifications of parents and children.

Two states — Maine and Vermont — recently studied the contemporary uses of minor guardianship and overhauled their statutes accordingly. Other states could model their own reforms on these statutes revised to address the needs of families today. Key reforms include:

- Ensuring that parents are informed of guardianship's implications before consenting,
- Requiring that appointment orders address what role, if any, the parent will have in the child's life during the guardianship – addressing issues about visitation, access to information, child support, and decision-making,
- Granting courts the authority to modify a guardianship order after the appointment is in place to ensure that it reflects the changing needs of the family,
- Providing a clear procedure for termination of a guardianship, and
- Ensuring that all adjudications can proceed in family rather than probate courts.

Extend Services to Guardianship Families

In addition to reforming guardianship laws, states can better serve kinship care families by extending family support and reunification services to the families that pursue guardianship as well as those involved in the public child welfare system. Although crises that give rise to a guardianship may prove temporary – for example, if a parent eventually overcomes substance abuse problems – many families in crisis need professional support such as family counseling, parent education, supervised visitation, substance use treatment, and other targeted measures. Assistance provided by public agencies should not be reserved just for families with children in state custody; in fact, help to kin caregivers can prevent the need for state intervention later.

Under the 2018 Family First Prevention Services Act, the U.S. Congress extended federal funding for state services to kinship care families. State policymakers should exploit the new resources as they follow the example of Maine and Vermont to institute legal reforms that preserve and support families in crisis.

Read more in Deirdre M. Smith, "From Orphans to Families in Crisis: Parental Rights Matters in Maine Probate Courts" *Maine Law Review*, 68, no. 24 (2016).