

**OVERVIEW**

Juvenile guardianship is available for temporary and permanent court wards and state wards when reunification or adoption have been ruled out as permanency goals. The court, at a permanency planning hearing, may appoint a juvenile legal guardian for a child in lieu of terminating parental rights or returning the child home. PA 202 of 2008 states that “reasonable efforts to place a child for adoption or with a legal guardian, including in-state or out-of-state options, may be made concurrently with reasonable efforts to reunify the child and family”. The court, with the consent of the Michigan Children’s Institute (MCI) Superintendent, may appoint a juvenile legal guardian for a child after termination of parental rights.

The guardianship shall be a judicially created relationship between the child and the guardian that is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of the following parental rights with respect to the child:

- Protection.
- Education.
- Care and control of the person.
- Custody of the person.
- Decision making.

A guardian’s powers include receiving money paid for the child’s support (including guardianship assistance payments, child support and governmental benefits), authorizing medical treatment, and consenting to the child’s marriage or adoption. If parental rights have not been terminated, a guardian may facilitate contact between the child and a parent, unless the court has limited the guardian’s authority to do so.

**JUVENILE  
GUARDIANSHIP  
ASSISTANCE**

When a prospective guardian is requesting guardianship assistance, the DHS juvenile guardianship assistance certification and agreement process must be completed prior to the appointment of the guardian by the court. The assigned worker is responsible for completing the process. See GDM 700 - 745 for specific policies.

**DETERMINING  
GUARDIANSHIP AS  
A PERMANENCY  
GOAL**

A caseworker should first determine whether juvenile guardianship is an appropriate permanency goal for a child or youth by completing the Caseworker’s Permanency Planning Checklist (DHS-2052 or DHS-2053). The caseworker must also explain the differences between adoption and guardianship to the prospective guardian and child, using DHS Publication 140, “Making the Decision to Become a Child’s Permanent Family”, and assist the prospective guardian and child to complete the Caregiver’s Permanency Planning Checklist (DHS-2051). If

parental rights have not been terminated, the caseworker should discuss the proposed juvenile guardianship arrangement with the child's parent(s), if possible. Although not legally required, the parent's consent to the juvenile guardianship will help ensure the future stability of the guardianship.

Before pursuing a juvenile guardianship for a child, a caseworker must document in the case service plan why reunification (if parental rights have not been terminated) or adoption are not appropriate permanency plans for the child. Examples of reasons why adoption may not be appropriate include:

- Strong cultural beliefs that are in opposition to termination of parental rights.
- It is in the child's best interest to maintain the parental rights of the birth parent(s) because the child and parent(s) have a meaningful relationship as evidenced by attachment and regular visitation. However, the parent, due to physical, medical or mental health disabilities is unable to provide day-to-day supervision and care for the child. The guardianship would allow the child to be cared for by a guardian on a permanent basis and maintain a relationship with the birth parent.
- In the case of a youth age 14 or older who has been provided information and counseling concerning permanency options and outcomes, the youth may choose not to be adopted but is willing to enter into a juvenile guardianship relationship.
- A relative is willing to provide a permanent home for the child but does not want to change the legal relationship (for example, grandparent or aunt) to the child.
- There are obstacles to adoption by a relative who has been determined to be the best placement for the child.
- Based on a long term placement with a foster family that has decided not to adopt, the placement is the best choice to provide a permanent family for the child through a juvenile guardianship.

If the court approves juvenile guardianship as a child's permanency plan at a permanency planning hearing or post-termination review hearing, the department must conduct background checks and a home study.

**Safe and Timely  
Interstate  
Placement of  
Children**

The Safe and Timely Interstate Placement of Foster Children Act of 2006, P.L. 109-239, requires the timely completion of interstate home studies. Juvenile guardianship (including relative) home studies requested by another state must be completed within 60 calendar days.

Placements cannot be made until training requirements are met and approval is given by the Interstate Compact on the Placement of Children (ICPC) Office. The law also adds an incentive program to encourage states to complete timely interstate home studies. To earn an incentive, the state must complete an interstate home study within 30 calendar days of the request. See FOM 931 to 932-2 for details of the procedures.

**Informing the ICPC Office of the Guardianship Plan for a Child Placed in Another State**

The DHS ICPC Office must be informed within 7 working days of the permanency plan change to juvenile guardianship for a Michigan foster child placed in foster care in another state. The assigned worker must complete the DHS-3309, Interstate Guardianship Plan Notice and send it to the DHS Interstate Compact Office, 235 S. Grand Ave., Suite 401, P.O. Box 30037, Lansing, MI 48909. The Interstate Compact Office will inform the state where the child is living of the plan for juvenile guardianship.

**Background Checks and Home Study (Assistance Not Requested)**

Before the court may appoint a guardian, the department must complete criminal background checks and Central Registry clearances for the prospective guardian and all other adults living in the household per foster care policy in FOM 722-3. DHS must also conduct a home study of the prospective guardian's home, unless a home study has been performed within the last 12 months. The background checks and clearances must be submitted to the court within seven days of the child's placement in a prospective guardian's home or, if the child or youth already resides in the home, within seven days of the court's determination at a permanency planning hearing or post-termination review hearing that juvenile guardianship with a current caregiver is appropriate. If a new home study is required, it must be submitted to the court within 28 days of the child's placement in a prospective guardian's home or within 28 days of the court's determination that juvenile guardianship with a current caregiver is appropriate. If guardianship assistance is not requested, the DHS-616, Juvenile Guardianship Home Study must be used if the BCAL-3130, Initial Foster Home/Adoption Evaluation was not completed.

**Licensing of Prospective Guardians (Requesting Guardianship Assistance)**

If the prospective guardian requests guardianship assistance, he or she must become a licensed foster parent and meet all licensing requirements, including fingerprinting and criminal history checks as listed for foster parents in FOM 922-1. A copy of the current foster home licensing assessment completed within the last 12 months must be submitted to the court. If the assessment was not completed within the last 12 months, a copy of an addendum to the assessment updating information in the original assessment must be submitted to the court. The BCAL-3130 must be used for new foster home licensing assessments.

**JUVENILE  
GUARDIANSHIP  
PROCESS FOR  
COURT WARDS**

The assigned worker must submit the following documentation to the court when requesting juvenile guardianship:

- A copy of the Caseworker's Permanency Planning Checklist (DHS-2052 or DHS-2053).
- A copy of the Caregiver's Permanency Planning Checklist (DHS-2051).
- A copy of the Initial Foster Home/Adoption Evaluation (BCAL 3130) or Juvenile Guardianship Home Study (Not Requesting Guardianship Assistance) (DHS-616).
- Any addenda to the above assessments if the original assessment is more than one year old.
- Criminal background checks and Central Registry clearances for all adult members of the prospective guardian's household.
- Fingerprint clearance for the prospective guardian(s).

The court may request additional documents.

If the court approves the Juvenile Guardianship, an Order Appointing Guardian will be entered. If the court denies the guardianship, a case conference must be scheduled to determine an appropriate permanency goal for the child.

**MCI CONSENT FOR  
STATE WARDS**

The Michigan Children's Institute (MCI) Superintendent represents the state as guardian of state wards beginning with the date of the child's commitment and continuing until the age of 19. The MCI Superintendent is authorized to consent to juvenile guardianship for a state ward. State wards include children who have been committed to the state through involuntary termination of parental rights in the Family Division of Circuit Court (Juvenile Code, MCL 712A.19b) or through release of parental rights by the legal parent(s) or licensed child placing agency to whom the child has been previously released (Adoption Code, MCL 710.28 and MCL 710.29(7)). The MCI Superintendent must approve the juvenile guardianship of any state ward. When considering whether to grant consent for a juvenile guardianship, the MCI Superintendent must consult with the child's lawyer-guardian ad litem.

The request for consent from the supervising agency is a recommendation that the prospective guardian be granted consent by the MCI Superintendent. In requesting consent for the juvenile guardianship of a child, the completed Juvenile Guardianship Consent Request for MCI

Ward form (DHS-2049 or DHS-2050) and required documentation must be submitted to the MCI Superintendent, Adoption Services Division, DHS Central Office.

**Consent Packet**

The following documents must be included when MCI consent is requested:

1. Juvenile Guardianship Consent Request for MCI Wards (DHS-2050) or Juvenile Guardianship Consent Request for MCI Wards - Not Requesting Guardianship Assistance form (DHS-2049).
2. Copy of the child's birth certificate.
3. JC-63, Order Terminating Parental Rights (Child Protective Proceedings).
4. Following voluntary release:
  - Release of Child by Parent (PCA 305).
  - Release of Child by Agency (PCA 306).
  - Order Terminating Parental Rights after Release or Consent (PCA 318).
  - Order Committing to Department of Human Services (PCA 322).
5. Copy of current foster home evaluation (BCAL-3130) or Juvenile Guardianship Home Study (DHS-616) and any addenda.
6. Child Adoption Assessment (DHS-1927) and any addenda, if available.
7. Caseworker's Permanency Planning Checklist (DHS-2052).
8. Caregiver's Permanency Planning Checklist (DHS-2051).
9. Copy of the case plan/Updated Service Plan (USP) addressing the required elements cited in GDM 715.

**More Than One Family Wanting to Obtain Guardianship**

If there is more than one family who wishes to obtain guardianship of the same child, the Permanency Planning Checklists must be completed and, if the family is appropriate for guardianship, a Preliminary Guardianship Assessment (DHS-1926-G) should be completed.

The assigned worker should provide a separate memo within the consent packet that explains which family is being recommended for guardianship and the supporting information for this determination.

If guardianship assistance will be requested, prospective guardians must be licensed foster parents and the child must live in the prospective guardian's home for at least six consecutive months prior to requesting guardianship assistance. In these cases, recommending a guardian other than the caregiver that the child has resided with for at least six months will cause a delay in permanency. The child will have to reside with the new prospective guardian for six months prior to the request for consent and guardianship assistance. This delay in permanency is significant but should not be the deciding factor in the case-worker's decision to recommend a guardian. Preference should be given to the prospective guardian who best meets the needs of the child and with whom the child has a significant bond.

Juvenile guardianship is an appropriate permanency goal only when reunification and adoption have been ruled out. If a relative or another adult with a significant relationship to the child is willing to adopt, the assigned worker must be able to demonstrate that there are compelling reasons why guardianship is the recommended permanency goal.

MCI wards may not be replaced with another family without the approval of the MCI Superintendent.

### **Guardianship Assistance Application**

Each competing party family must be given information regarding the Guardianship Assistance Program (GAP), including Publication 140, Making the Decision to Become A Child's Permanent Family.

### **DENIAL OF MCI CONSENT TO APPOINT A GUARDIAN FOR A SPECIFIC CHILD**

#### **Process**

The following process is to be followed when an assigned worker recommends that a prospective guardian not be granted consent to become a guardian of a specific MCI ward.

#### **Written Notice of Agency's Recommendation to Deny Consent**

If the assigned worker determines that the prospective guardian should not be recommended for consent, the prospective guardian must be informed and provided with a summary of the factors that were considered.

The assigned worker must inform the family in writing, using the DHS-605G, Recommendation to Deny Request. The prospective guardian must also be informed that they may request a case conference with the supervising agency to discuss information contained in the Initial Foster Home/Adoption Evaluation (BCAL-3130) or Juvenile Guardianship Home Study (Not Requesting Guardianship Assistance) (DHS-616), and the Caseworker's Permanency Planning Checklist (DHS-2052). The conference must be requested by the prospective guardian

within 14 calendar days of receipt of the denial form (DHS-605G). The directions for requesting a case conference are included in the DHS-605G.

### Case Conference

Within 14 calendar days of receipt of the request for a case conference, the supervising agency director or designee must hold the case conference. The purpose of the case conference is to allow the prospective guardian to clarify or provide additional information concerning the BCAL-3130 or DHS-616 and the DHS-2051. Participants must include the assigned worker and the worker's supervisor. For purchased services cases, the DHS foster care monitor must be included. MCI office assistance may also be requested.

The prospective guardian may not discuss other applicant families in a competing party situation. A support person chosen by the prospective guardian may attend the case conference. Additional participants may be included at the discretion of the person conducting the conference. The supervising agency may limit the number of outside participants for good cause, such as the size of the group.

### Final Recommendation of Supervising Agency

Following the case conference, the person conducting the case conference must inform the prospective guardian of the final recommendation in writing. If the agency does not recommend the prospective guardian be granted consent, the prospective guardian must be informed that additional information may be provided to the MCI office within 14 days. The appropriate mailing address must be provided. A copy of the letter to the prospective guardian should be forwarded to the lawyer-guardian ad litem (L-GAL) for the child. If an attorney represents the prospective guardian, a copy of the letter must also be provided to the attorney.

A copy of the DHS-605G, Recommendation to Deny Consent, must be submitted to the MCI office with a copy of:

- BCAL-3130, Initial Foster Home/Adoption Evaluation, or DHS-616, Juvenile Guardianship Home Study (Not Requesting Guardianship Assistance).
- DHS-2052, Caseworker's Permanency Planning Checklist.
- DHS-2051, Caregiver's Permanency Planning Checklist.
- Any addenda to these reports.

Assigned workers should include a cover letter to the MCI office summarizing the reasons for their recommendation. The cover letter should also identify the L-GAL for the child and any other professionals (e.g., therapist, medical care staff, teachers, etc.) who work with the child.

**Note:** If the agency reverses its position and recommends the family for guardianship, the BCAL-3130, Initial Foster Home/Adoption Evalua-

tion, or DHS-616, Juvenile Guardianship Home Study (Not Requesting Guardianship Assistance), must be updated to reflect the change in recommendation.

**MCI Review and Written Decision**

The MCI office must review the information provided by the supervising agency and by the prospective guardian. Additional information may be requested of the supervising agency. Consultation with the L-GAL for the child and other professionals may also occur. The MCI office may consult with the DHS Office of Family Advocate and/or with the respective area office. The MCI superintendent must issue a written decision containing a brief description of the factors considered. The written decision may include the MCI superintendent's decision to approve consent.

**Written Notice to Family of MCI Decision**

If the MCI office denies the consent to guardianship, a copy of the written decision must be sent from the MCI to the prospective guardian informing them of the denial of the request for consent to guardianship. The written decision must also be sent to the supervising agency and the L-GAL for the child. The supervising agency will be informed that they may proceed with permanency planning for the child.

Notification of the denial to the prospective guardian from the MCI office must include information that MCL 712A.19c allows an individual who has been denied a request for consent to guardianship to file a motion that consent was withheld in an arbitrary or capricious manner. This motion must be filed within 56 days of receipt of the decision to deny consent.

**Forwarding Information to the Court**

Copies of the denial of consent letter to the prospective guardian from the MCI office and the DHS-605G, Recommendation to Deny Consent, from the supervising agency must be presented to the court if a motion is filed.

**Decision by the Court**

When a motion is filed alleging that the MCI superintendent's failure to consent was arbitrary or capricious, the court must ensure that notice is provided to the MCI superintendent and other parties entitled to notice. The court must hold a hearing. If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary or capricious, the court may approve the guardianship without the MCI superintendent's consent.

**Note:** Upon request from the assigned worker's supervisor, the MCI superintendent or the director of the DHS Permanency Division may approve exceptions to the above process for MCI wards. Exceptions may be granted if it appears that doing so will achieve permanency and stability of a ward as quickly as possible and is in the best interest of the ward. The DHS-1785, Policy Decision, may be used for documenting an exception.



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**ORDER  
APPOINTING  
GUARDIAN**

After the court has received the background checks, home study and the MCI superintendent's written consent (for state wards only), the court may enter an order appointing a juvenile guardian or schedule the matter for a hearing.

**Note: If guardianship assistance is requested, the determination of eligibility for guardianship assistance and a signed guardianship assistance agreement must be completed before the court enters the order appointing the guardian. (See GDM 700-745.)**

**TERMINATION OF  
COURT  
JURISDICTION AND  
FOSTER CARE  
CASE ACTIONS****Temporary Court  
Wards**

For temporary court wards, court jurisdiction over the case under MCL 712A.2(b) (the child protective proceeding) does not terminate until after the court appoints the juvenile guardian **and** conducts a review hearing. **The foster care case must remain open with all required foster care activities provided after the guardian is appointed. The foster care case must not be closed until the court terminates jurisdiction of the child abuse/neglect proceeding at a review hearing.**

**State Wards**

For state wards, MCI jurisdiction ends after the court appoints the juvenile guardian, however, **the foster care case must remain open with all required foster care activities provided after the guardian is appointed. The foster care case must not be closed until the court terminates jurisdiction of the child abuse/neglect proceeding at a review hearing.** Court jurisdiction terminates after the court appoints a juvenile guardian **and** conducts a review hearing.

**Review Hearing  
Time Frames**

Required review hearings must be conducted:

- No later than 91 days from the most recent review hearing if the guardian is appointed less than one year from the child's latest removal from home.
- No later than 182 days from the most recent review hearing if the guardian is appointed more than one year from the child's latest removal from home.

The court may require the department to file a written report for the review hearing.

The court may hold a review hearing and terminate jurisdiction of the child abuse/neglect proceeding earlier than the 91 or 182-day requirement. It is possible for the review hearing to be scheduled immediately following the court's guardianship order. The foster care worker should routinely ask the court to schedule the final review hearing before the expiration of the 91 or 182-day time period. If the child has resided in the guardian's home for an extended period and the court has appointed the guardian, an extended period of court and agency supervision should not be necessary.

**Required Foster Care Activities after the Guardianship Appointment**

During the review period, the **foster care case and Medicaid remains open** and all required foster care worker activities must continue until the court terminates jurisdiction of the child abuse/neglect proceeding. Agency supervision remains open under the child abuse/neglect case.

A family who was licensed for foster care in order to receive juvenile guardianship assistance must maintain their license until the court's jurisdiction of the child abuse/neglect proceeding is terminated.

**SWSS Activities after the Guardianship Appointment**

The foster care payment must be ended effective the day immediately prior to the court order of guardianship. **If the foster care payment authorization continues beyond the day immediately prior to the court order of guardianship, the foster care worker will need to recoup the foster care funds.** For a child under foster care supervision by a private contract agency, the foster care administrative rate will be paid through the DHS Permanency Division during the review period.

**Actions When The Court Terminates Jurisdiction of the Child Abuse/Neglect Proceeding**

The private child placing agency worker must send a copy of the court order terminating the jurisdiction of the child abuse/neglect proceeding to the DHS foster care monitor and the DHS Subsidy Office within 5 business days of the termination. For DHS supervised cases, a copy of the order terminating the jurisdiction of the child abuse/neglect proceeding must be sent to:

DHS Subsidy Office  
235 S. Grand Ave., Suite 412  
P.O. Box 30037  
Lansing, MI 48909

In all cases, the standards and procedures in FOM 722-15 must be followed to close the foster care case and Medicaid when the court terminates jurisdiction of the child abuse/neglect proceeding.

**COURT-ORDERED INVESTIGATIONS OF THE GUARDIANSHIP**

Following the court's termination of jurisdiction under MCL 712A.2(b), termination of the MCI's jurisdiction and closure of the foster care case,

the court's jurisdiction over the juvenile guardianship continues. The court must conduct annual reviews of the guardianship, which are based upon either a court hearing or an annual written report the guardian submits to the court and the DHS subsidy office. During the guardianship or in conjunction with an annual review, the court may appoint the department to conduct an investigation of the guardianship and file a written report of the investigation within 28 days of the appointment. The report must include a recommendation regarding whether the guardianship should continue or be modified and whether a court hearing should be scheduled. The assigned DHS worker may use the State Court Administrative Office (SCAO) JC 96 form, or another form as directed by the court.

## **REVOCAION OR TERMINATION OF JUVENILE GUARDIANSHIP**

The court shall, on its own motion or upon petition from the Department or the child's lawyer guardian ad litem, hold a hearing to determine whether a guardianship shall be revoked. A guardian or interested person may also petition the court for permission to terminate the guardianship. The JC 98 may be used to petition the court. "Interested persons" may include a parent if the parent's rights were not terminated (i.e., the guardianship was ordered prior to termination of parental rights). A petition to terminate a guardianship may include a request for appointment of a successor juvenile guardian (without guardianship assistance).

If a petition for revocation or termination of the guardianship is filed, the court must hold a hearing on the petition within 28 days. In conjunction with a revocation or termination petition, the court may order temporary removal of the child from the guardian's home pending the hearing. If the court orders the child's removal, the court must conduct an emergency removal hearing within 24 hours of the removal, and, unless the child has been returned to the home of the guardian, a review hearing within 14 days. The court may order a representative of the department to appear at the review hearing and give testimony or file a written report.

### **Investigation and Report**

In preparation for a revocation or termination hearing, the court must order DHS to conduct an investigation and file a written report with the court. The report must be filed with the court not later than seven days before the revocation or termination hearing. The report must include the reasons for terminating or revoking a guardianship and a recommendation regarding temporary placement, if necessary.

### **Hearing**

After a hearing on a petition to revoke a juvenile guardianship, the court must revoke the guardianship if it finds by a preponderance of the evidence all of the following:

- Continuing the guardianship is not in the child's best interest.
- It is contrary to the child's welfare to be placed in or remain in the guardian's home.
- Reasonable efforts were made to prevent removal from the guardian's home.

After a hearing on a petition to terminate a juvenile guardianship, when there is no request to appoint a successor juvenile guardian, the court must follow the same procedure that is required for a hearing on revocation of a guardianship (above). If the termination petition includes a request for appointment of a successor guardian, the court must terminate the current guardian's appointment and proceed with the investigation and appointment of the successor guardian. The department must conduct the required background checks and home study. A successor guardian is ineligible for guardianship assistance.

Following revocation or termination (without a successor guardian) of a guardianship, the court's jurisdiction over the previous child protective proceeding is reinstated under MCL 712A.2(b). The court must place the child under the care and supervision of the department or, if parental rights were previously terminated, commit the child to MCI under MCL 400.203.

### **Dispositional/ Review Hearings**

Within 42 days following revocation or termination of a guardianship, the court must hold a dispositional hearing or, if parental rights were terminated, a post-termination review hearing. The department must prepare a case service plan and file it with the court no later than seven days before the hearing.

The court will schedule subsequent dispositional review hearings, regardless of whether the child has been returned to the custody of a parent or placed in out-of-home care.

**EXHIBIT**

