

Guardianship Planning for Immigrant Families



CHICAGO VOLUNTEER LEGAL SERVICES
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What is minor guardianship?

- When a parent is unwilling or unable to raise a child for any reason (mental illness, substance abuse, criminal issues, deportation, etc.), guardianship is a group of tools that can be used to give another adult authority to consent to medical care and make all other day-to-day parenting decisions for the child.



Requirements for becoming a court-appointed guardian



- Must be 18 or over
- A resident of the United States
- The adult petitioning for guardianship cannot have been adjudicated a disabled adult
- Does not have a felony conviction*
- Legal immigration status?



Types of Guardianship



- Most complete/official to least formalized:
 1. **Plenary Guardianship**
 - Full Guardianship - Effective Now - Court-Ordered
 2. **Standby Guardianship**
 - What-If Guardianship - Court-Ordered
 3. **Short-Term Guardianship**
 - What-If Guardianship - Person-to-Person

Plenary Guardianship



- Court-ordered guardianship
- Lasts until child is 18 or a judge “discharges” the guardian
 - ✦ Because a parent petitions the court to regain custody
 - ✦ Because guardian seeks to be discharged, or
 - ✦ Because a guardian is removed for cause
- Petitioner should understand this as a commitment to raising the child, possibly until the age of 18
- In Cook County, the Guardian needs to have legal immigration status*

Standby Guardianship



Standby Guardianship

- Court-ordered.
- Allows someone to become a guardian at the time of a certain event (death, incapacitation, detention or deportation).
- Upon occurrence of this event, the standby guardian has immediate authority to act as guardian.
- The new guardian has 60 days to file petition for appointment as plenary guardian of the minor.
- In Cook County, the Guardian needs legal immigration status.

Short-Term Guardianship



Short-Term Guardianship

- Only form that DOES NOT require court involvement
- Lasts up to 365 days – renewable.
- Parent(s) or legal guardian must sign short-term guardianship document, but guardian can sign it later.
- Can take effect upon occurrence of specific event (detention or deportation).
- Parent(s) can use statutory short-term guardianship form.
- Easy to execute and very flexible.
- Can be revoked at any time by EITHER parent**
- Can appoint someone who is undocumented, but someone with legal status would be preferable.

Short-Term Guardianship



Disadvantages of Short-Term Guardianship:

- Short-term guardianship documents are not accepted everywhere, but they should be.
 - ✦ The law states that short-term guardians have the same authority court-appointed guardians (755 ILCS 5/11-13.3)
 - ✦ However, sometimes short-term guardians have trouble traveling, enrolling a child in school or obtaining public benefits that the child is entitled to receive.

Short-Term Guardianship



- **Disadvantages of Short-Term Guardianship:**

- Not permanent

- ✦ Can only last up to 365 days.

- ✦ Can be renewed.

- If both parents do not sign the short-term guardianship, the parent that does not sign can still revoke the short-term guardianship. Will not be effective if challenged by the other parent.

Standby vs. Short-Term Guardianship



Standby

- Parties must file a petition and go to court
- Can only be entered into or dissolved by a judge
- Both parents must be informed of court dates by certified mail or publication
- Court will conduct a DCFS & criminal background check on any petitioner
- May provide more stability for child--easily converted into plenary guardianship if triggering event occurs
- Helps ensure that the parent's wishes will be enforced because the standby guardian is "pre-approved" by the court.
- Court will consider the best interests of the child in appointing a standby guardian.

Short-Term

- Parties can enter into guardianship without court involvement
- Can be dissolved by either parent at any time
- Only one parent must consent if other parent can not be found or is not the legal parent/father
- No background checks needed
- Short-Term Guardianship can last no longer than 365 days
- Can be terminated at any time
- Not always 100% effective
- This type of guardianship gives greatest power and flexibility to the parent. A child's best interest is not necessarily taken into account.

How does a person acquire guardianship?



- **Plenary or Standby Guardianship:**
 - Guardianship Assistance Desk for Minors
 - ✦ 69 W. Washington St., 10th Floor in Chicago
 - ✦ Call 312 603-0135 for an appointment
 - Legal Aid Organizations
- **Short-Term Guardianship:**
 - Legal Clinics - like today!
 - Legal Aid Organizations (CVLS, Catholic Charities, etc.)
 - ILAO - information and documents in Spanish

Scenario #1



Aunt is caring for her niece and nephew because the children's parents were deported to Mexico and cannot return to the United States. The parents want the children to stay in the United States indefinitely so that they can continue their studies. Aunt is a Lawful Permanent Resident (LPR), has no criminal record, and is willing and able to care and provide for the children long-term, if necessary.

Aunt is a good candidate for plenary guardianship. Children are already living with a non-parent and this is a long-term situation.

At the very least, aunt will want a short-term guardianship so that she is able to immediately attend the day-to-day needs of the children.

Scenario #2



Mother has one daughter and Mother is afraid of deportation because she is undocumented. Mother would like to make a plan so her daughter can stay with Mother's adult cousin if Mother is detained or deported. The cousin is a citizen. Mother does not have any criminal convictions and is not afraid of appearing in court.

Petitioning for standby guardianship would be a good idea in this situation. A short-term guardianship that becomes effective upon detention could also be executed while the family prepares to petition the court.

Scenario #3



A father is caring for his three minor children. Father is undocumented and he's afraid of being deported because he has prior criminal convictions. Father would like to designate a guardian in case he is deported, but none of his family members have legal status.

Short-Term Guardianship is the best plan for this scenario. No court involvement is required and he can appoint someone who does not have legal immigration status.

Guardian of the Estate

- Necessary when a child has money
 - Legal Settlement
 - Life insurance policy from deceased parent
- Parent or legal guardian may have to petition the court to become guardian of the estate before they can access the money for the child.
- Only situation in which a parent would have *guardianship* of his or her own child.



When appointing a guardian:



- Parents should:
 - Know and trust the person they are appointing.
 - Think about and discuss their long-term objectives:
 - ✦ Have kids remain in the US long-term?
 - ✦ Have kids returned to parent's country of nationality?
 - Appoint someone who would meet the legal standards for plenary guardianship.
 - ✦ Plenary guardianship through the court may become necessary if the parents are deported.
 - Have the right to assign guardianship.
 - If signing alone, understand the rights of the other parent.

General Info



- **Notaries**
 - Should not charge an exorbitant amount!
 - Are NOT necessary for short-term guardianships!
(only two witnesses are needed)
- **Passports**
- **DCFS**
 - Will my kids go into the system?
- **Not everyone needs a guardianship immediately. Short-term guardianships can be executed any time.**

How to fill out the STG



- **Section 3: Effective Date**
 - Other: On the date I am/we are detained by immigration or deported from the United States.
- **Section 4: Termination**
 - First box: On the date I state in writing and able to make and carry out day-to-day childcare decisions....
- If parents are present together and agree, they can both sign in the top section.
- If one parent is not here but agrees, that parent can sign the bottom at a later date.

Clinic Checklist



- **CVLS Disclaimer**
 - One signed original for us to keep. Copy to client if wanted.
- **CVLS Intake form**
 - For us to keep.
- **Short-Term Guardianship - English**
 - One original for client to keep
- **Short-Term Guardianship - Spanish**
 - Blank or signed copy for client to keep
- **Copies of IDs, photos and other documents**
 - For us to keep—do not keep any originals

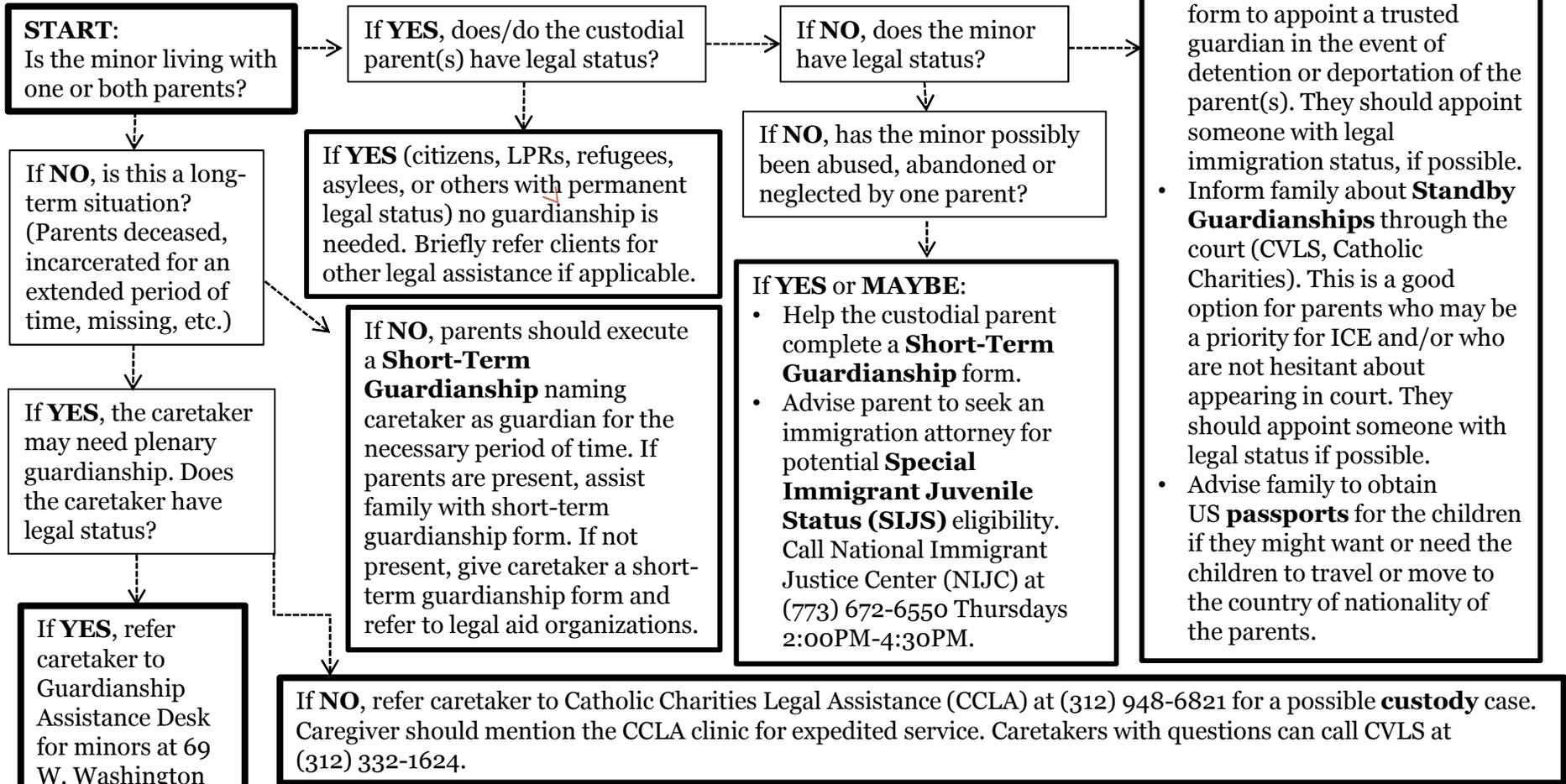
Logistics



- CVLS Staff on Site for Legal Questions
- Volunteer interpreters, witnesses and helpers
- Please turn in all paperwork before you leave!
- **THANK YOU!!**



GUARDIANSHIP PLANNING FOR UNDOCUMENTED IMMIGRANTS



IMPORTANT NOTES - Short-Term Guardianships:

- Should be accepted by doctors, schools, etc. 755 ILCS 5/11-13.3
- If signed by only one parent, can be revoked by the other parent. Will not prevail over a custody challenge by a parent who did not consent to or know about the Short-Term Guardianship.
- May or may not be effective for international travel with the minors.
- If families are not ready to complete the forms now, refer to CVLS or CCLA.
- Please complete an intake form for each family, copy all IDs and documents prepared and give all paperwork to CVLS staff at the end of this clinic.

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Because equal access to justice is everyone's fight