

Dependency vs. Guardianship

Important Information You Need to Know

The forms in this packet can only be used to file a dependency petition. Read the following carefully to understand some major differences between Dependency and Guardianship. The information below will help you make sure you are filing the appropriate petition.

1. Dependency vs. Guardianship. What is the difference between dependency and guardianship?

- A. Dependency: A dependency is a decision by the Juvenile Court that a child is in need of effective care and control and that all parents are unable or unwilling to provide proper care and control. Usually, a Dependency Petition is filed by the state because concerns about abuse or neglect have been reported to DCS and there is evidence of immediate danger to the child(ren). The parents may disagree with you filing a Dependency Petition to obtain legal custody of their child(ren).

You may file a dependency petition if you believe that there is no parent or guardian willing or able to provide proper care and control over a child.

Examples include:

- Child is abused or abandoned
- Child is neglected because parent or guardian abuses drugs or alcohol
- Parent or guardian is not able to meet the child's needs
- Parent or guardian is unable to provide the child with basic necessities such as suitable housing, food or necessary medical care.

A Dependency Petition may involve an investigation and report by DCS. It may also involve appointing attorneys for the parents and the child(ren), a temporary custody hearing, and possibly a pretrial conference and trial. If the Juvenile Court finds that the child is dependent because the parents are unable or unwilling to provide care, the court decides who will care for the child(ren). The Juvenile Court and DCS oversee the child(ren)'s care and services provided to the parents and the child(ren) in an effort to reunite the family.

A dependent child remains under the Court's control until the Court declares that a parent has become willing and able to provide proper parenting. An order of dependency from the Juvenile Court will last until the child turns 18 or the Court changes or dismisses it.

- B. Guardianship: A guardianship can be filed when someone, other than the parent, wants to be appointed by the Court to take over parental responsibilities *AND* either both living parents (whose parental rights have not been permanently cut off by court order) will consent to the guardianship *or* at least will not go to Court *to oppose* the appointment. Guardians take over parental responsibilities for making decisions regarding housing, medical care, and education, among other matters, for as long as the guardianship remains in effect.

An adult may ask the Juvenile Court to appoint a legal guardian for a child when neither parent is going to be available (such as when the parents are to be deployed by the military, or perhaps the custodial parent is or is going to be incarcerated or in rehab, etc.), or is incapable or unwilling to provide for the child, and who after receiving notice of the Petition for appointment of a Guardian, will either give permission for the guardianship, *or at least will not go to court to object or disagree.*

If either parent files papers with the court or shows up in court to object to a guardianship, it will not be granted.

An order of guardianship is good until the Court changes or dismisses it, the child turns 18, or either parent files papers to terminate the guardianship. Guardianship is based on the parents' permission, or at least their failure to object to the guardianship. If *either* of the parents later changes his or her mind and lets the Court know that he or she objects to the guardianship, the Court has no choice but to end the guardianship, but may refer the matter for investigation as to whether a Dependency is needed.

Both dependency and guardianship may result in a person being appointed as a "guardian" for a minor (or minors), but there are important differences between Dependency and Guardianship. In Maricopa County, both Juvenile Dependencies and Juvenile Guardianships (or "Guardianship for Minors") are filed with the Juvenile Division of the Superior Court. If you decide that you need to file for a guardianship, forms and instructions are available for purchase at the Law Library Resource Center, or Clerk of Court Juvenile Division or may be downloaded for free from the internet.

2. A Dependency Petition is a Lawsuit

Once you file the Dependency Petition, you have started a lawsuit. The Petition is processed by the Court according to laws and Court rules that apply. It is your responsibility to comply with all Arizona Statutes and Rules of Court, which are available at most libraries.

A judicial officer (judge or commissioner) will review your Petition. If your Petition does not meet the requirements of the law, it will be dismissed and you will be notified of the dismissal.

3. Court-Ordered State Involvement

The Court may order a separate investigation into the facts of the case. The Arizona Department of Economic Security/ Arizona Department of Child Safety, from here on called DCS, will be ordered to complete the investigation and file a report with the Court. DCS may also become a part of the case. This means DCS may provide services to the family (for example, counseling), supervise the child or children for whom a Dependency is ordered, or place the child in a safe environment.

4. Appointment of Counsel

Filing a Dependency Petition does not mean the Court will assign you a free lawyer. It is your responsibility to either represent yourself, or hire your own lawyer. The Court may appoint an attorney for the child(ren) involved. If the child(ren)'s parents ask for an attorney and the Court determines they cannot afford one, the Court may appoint an attorney for the parents.

5. Other Important Information

A. Conservatorship: A minor generally needs a *conservator* if:

- The minor owns money or property or has annual income in excess of \$5,000 that requires management or protection, which cannot otherwise be provided.
- The minor has business affairs or assets which may be jeopardized (at risk of loss or damage) by his or her being a minor; and/or
- The Minor needs funds for his or her support and education and protection is necessary or desirable to obtain or provide those funds.

Conservators are appointed and supervised by the *Probate Division* of the Superior Court. If the minor needs both a guardian and a conservator, then the entire matter is handled by the Probate Court and the Petition is submitted to the Probate Court - *not* to Juvenile Court.

B. A Note About “Custody” (now “Legal Decision Making” in Arizona)

While most people are more familiar with the term “custody” than either “dependency” or “guardianship,” Arizona now uses the term “legal decision making” instead of custody. Arizona law (Arizona Revised Statutes [A.R.S.] § 25-409. See also § 25-402) allows for someone who stands “in loco parentis” (in the place of a parent) to the children, meaning someone who has acted as a parent at some time when the actual parents were absent, to file for legal decision making (custody). This is sometimes referred to as “third party custody,” and may be used by relatives and non-relatives alike who meet all the requirements of the statute.

Currently the Law Library Resource Center *only* has forms and instructions for the biological or adoptive parents to file for legal decision making, which is handled in the Family Court division of the Superior Court. Those forms and instructions *will not work* for persons other than the parents who wish to file for custody. Only an attorney can advise you as to whether there are advantages or other reasons you should consider applying for “legal decision making,” as opposed to “guardianship” or “dependency,” and draft the papers for you or alter existing forms to fit your needs.

NOTE: You may contact the *Juvenile Court Guides* at 602-506-5903 (Durango) or 602-506-4886 (Mesa) for further assistance.