

Indiana Legal Services, Inc

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Ending a Guardianship over a Child

What if someone has legal guardianship over my child, but I want my child back?

Unfortunately, once the court establishes a legal guardianship, it can be difficult to end, or “terminate,” the guardianship.

If the guardians agree with you that the guardianship can be ended, you and the guardians can prepare and sign a written statement ending the guardianship and giving the child back to you. You must give the agreement to the guardianship court for approval before the guardianship can be ended. (If the welfare department was involved in the guardianship when it was entered, you will need to notify the welfare department when you are trying to end the guardianship).

If the guardians do not agree to end the guardianship, then you will need to file a “Petition to Terminate Guardianship” with the guardianship court. This asks the court to end the guardianship and return the child back to your care.

What does the court consider when deciding whether to end a guardianship?

You must prove to the court that the guardianship is no longer necessary. This might seem like an easy standard to meet, but many courts also consider whether ending the guardianship is in “the best interests of the child.”

In Indiana, it is presumed that a natural parent is the best custodian of a child. However, when a child has been in a guardian’s care, the guardian may be able to keep the child by presenting evidence that:

1. You are unfit to care for the child;
2. You accepted the guardianship for a long time before objecting to the guardianship; or
3. You voluntarily gave up your child to the guardian and now the child and the guardian have such a good relationship that it would hurt the child and the guardian to end that relationship.

What can I do to convince the court to end the guardianship?

It may be helpful to your case if you can show the following:

1. Your situation has changed in a positive way and you are now able to care for the child and

provide for the child's daily needs, such as food, clothing, shelter, daycare, education, and medical care.

2. You are physically and emotionally able to care for the child by providing supervision, guidance, instructions, and appropriate discipline.
3. You have made plans for your family, for the immediate future and for later, and these plans will benefit the child.
4. You have helped with the child's support, even if the court has not ordered you to do so.
5. You remember the child on special occasions, like his birthday and special holidays, by sending cards or gifts or spending time with the child.
6. You visit the child on a regular basis.
7. You are financially stable. You are working regularly at a job that provides enough income to support your family (rather than staying with other family members or friends), and you have not had any recent evictions or creditor problems.
8. You have frequent contact and good relationships with family members, friends, school, and church or community organizations.
9. If you have not been able to work, you have gotten assistance (Hoosier Healthwise, food stamps, TANF or other benefits) to support your family until you can work.

What if my child's guardian won't let me visit my child?

If the guardian won't let you visit and no visitation was included in the guardianship order, you can ask the guardianship court to enter a visitation order. Courts often use the Indiana Parenting Time Guidelines for visitation orders. You may ask the court for a copy of these Guidelines, or you can see them at the link to the right of this article called Parenting Time Guidelines.

If you have not been visiting your child, you may want to try to establish regular visitation before you ask the court to terminate the guardianship. The court will be more likely to terminate the guardianship if you have been visiting your child regularly.

Do I need an attorney to ask the court to terminate a guardianship?

If you and the guardian agree that the guardianship should be ended, you may not need an attorney. If, however, the guardian does not agree to end the guardianship, you should try to get an attorney to help you with ending the guardianship.

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