



Guardianships and

Immigration – FAQs

The law about guardianship is different for each state. This document addresses questions about guardianships under Illinois law.

What is a guardian?

A guardian is an adult who is not the child's parent, who is legally allowed to care for the child the way a parent would. A guardian is required to make sure the child gets medical care, goes to school, and is fed, housed, and clothed. For details on different types of guardianships, see [Chicago Volunteer Legal Services \(CVLS\) Types of Guardianships FAQ](#).

Should I appoint a guardian for my children if I fear detention or deportation?

Not necessarily. You should think about who will care for your children if you are detained or deported. This is an essential part of safety planning. However, not everyone will need a court-appointed legal guardian, and it is important to consider what is best for your family before taking legal action.

If you are detained or deported, someone will need to take care of your children. If that person is a close relative who lives in the same neighborhood and your children would remain in the same school and see the same doctor, you may not need a guardian right away. However, if your children would have to change schools or the caretaker is not a close relative, or if the caretaker cannot access services for the children, she or he may have to petition the court for guardianship.

If I am detained or deported, will my children be taken by the state?

Unlikely. The Department of Children and Family Services (DCFS) may temporarily remove children from a home if it determines their well-being is at risk. However, DCFS does not automatically take children into care simply because their parents are arrested. If another appropriate adult is available to care for the children, it is highly unlikely that DCFS would get involved where a parent is detained or deported.

Do I have to hire a lawyer and go to court to request a guardian for my children?

Not necessarily. There are several types of guardianship under Illinois law. [See CVLS FAQs] Plenary (long-term) guardianships and standby guardianships require you to go to court. If you live in Chicago, you may be able to file these cases without a lawyer. The Guardianship Assistance Desk for Minors at 69 W. Washington, across from the Daley Center can help people without lawyers fill out the paperwork for these kinds of cases.

There is also a type of guardianship that does not require you to go to court, called a short-term guardianship. This is a form that you and the person you want to become guardian must fill out and sign in front of two witnesses. [See CVLS FAQs for more information about this type of guardianship.] A short term guardianship can last for up to 365 days once it takes effect. However, a parent can cancel or revoke a short term guardianship at any time simply by telling the guardian and taking the children back.

What are the rights of the other parent if I name someone to be guardian over my children?

Either parent can revoke a short term guardianship at any time. For a court ordered guardianship, a parent who did not agree to it or did not know about it can ask the court to discharge the guardian and take the children back. While not guaranteed, in most cases courts are inclined to return children to a parent who did not know about a guardianship and did not agree to it.

Does a guardian have to have lawful immigration status?

Sometimes. Many courts in Illinois, including the probate court in Chicago, require a guardian to have lawful immigration status. If you choose to use a short-term guardianship, which does not require court involvement, you may designate any adult regardless of their immigration status.

Can I appoint a guardian from detention or from my home country?

Probably. For a court to appoint a guardian, the proposed guardian and the child need to present themselves in court. The parent must be notified, but is not required to appear in court. If you are in detention or in your home country, a guardianship court case can proceed without you. If you do not want the case to go to court, you may also prepare and sign a short-term guardianship form from detention or from your home country. [See CVLS FAQs on STG]

Does appointing a guardian for my children terminate my parental rights?

No. A guardianship does not terminate either parent's rights to their children. For a court-ordered guardianship, a parent may come into court and request that the guardianship be terminated, and if the court finds that it's in the child's best interests to return to the parent, the court will terminate the guardianship. For a short-term guardianship, either parent can simply communicate to the guardian that they want the guardianship to end.

Can I change or discharge a guardianship from my home country?

It may be difficult. If the guardian agrees to return your children and has a short-term guardianship, the parent can simply tell the short-term guardian that she or he wants the guardianship to end and take the children back.

If the guardian does not agree to return your children, it will be very hard to get them when you are in another country. You will need to hire an attorney to represent you and petition the court where the guardian and your children live. It's important to have a guardian you trust to care for your children and return them to you when you are ready.

If I find myself deported and I want my kids to stay in the US with a guardian I appoint, what do I do?

If someone is going to take care of your children for a long time, a short term guardianship may not be sufficient. In that case, you should consider a plenary (long term). If you have a deportation order already, or think you are likely to be deported soon, you should consider appointing a standby guardian.

If I find myself deported and I want my kids to join me what should I do?

If you want your children to join you in another country, they will need passports. American born children will need a U.S. Passport. Foreign-born children will need a passport from that country. You should apply for a passport for your children now, while they are with you.

It is unlikely someone with a short term guardianship would be allowed by the airlines or immigration to send or take children out of the country. However, someone who has court-ordered guardianship will probably be allowed to send or take a child out of the country.

What if my children have special needs?

If your children have special medical or educational needs, or there are other special circumstances in your family, you should consult with an attorney who specializes in minor guardianships to see what the best fit for your family would be.

What if my children are undocumented, or I am the caretaker for undocumented children?

Some undocumented children may be eligible for Special Immigrant Juvenile Status. If you are considering filing anything in court regarding custody or guardianship for an undocumented child, please consult with an immigration attorney before filing. There may be ways to help that child get legal status in the US.

Where can I find more information about guardianships in Illinois?

Contact Chicago Volunteer Legal Services at (312) 332-1624 or the Guardianship Assistance Desk for Minors at (312) 603-0135.

Where can I receive an immigration legal screening?

Contact the National Immigrant Justice Center to schedule an appointment or speak with an NIJC legal worker in-person or by phone (312) 660-1370.

Where can I find more community resources and information?

Contact The Resurrection Project's Community Navigator Program at (312) 880-1150 or email erendon@resurrectionproject.org