



# Major Reforms to Minor Guardianship Laws

Friday, February 2, 2024



# Webinar Overview



- NCSL's Family Friendly Courts Project Resources
- Presentation on Minor Guardianship
- Iowa and Vermont State Examples
- Facilitated Conversation: Representative Steven Holt (IA) and Trine Bech (VT)
- Q & A

# NCSL Resources

- [Family-Friendly Courts: Opportunities for State Legislators To Improve Civil Court Processes](#)
- [Family-Friendly Courts: State Legislatures' Role in Improving Eviction Proceedings](#)
- [Family-Friendly Courts: State Legislatures' Role in Improving Minor Guardianship Proceedings](#)
- [Family-Friendly Courts: Facts and Legislative Opportunities](#)



# Today's Speakers



**Darcy White**

Senior Officer, Courts and  
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**Representative Steven Holt**

House Judiciary Chair  
Iowa House of  
Representatives



**Trine Bech**

Founding Director (retired)  
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Representation Center

# Minor Guardianship: How States Can Make Policies Work Better for Courts and Families

February 2, 2024

Pew

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## 1 in 20 children in U.S. are under nonparental care

- ~3.7 million are being raised by someone who is not their parent, nor is the parent living in the household.
- ~2.4 million are being raised by a relative—mostly grandparents—or a close family friend.

*Source: Annie E. Casey Foundation KIDS COUNT Data Center.*

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## Children are placed under nonparental care for multiple reasons

Reasons might require long- or short-term separation from parents, some with the intent to reunify with parents:

- Death of parents
- Abuse and neglect
- Substance use
- Incarceration
- Physical or mental health issues
- Military deployment

All often involve relatives or close friends stepping up to provide safe, stable care for kids—commonly called “kinship care” or “nonparental care”. **HOWEVER...**

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## **Relatives and other nonparents don't have automatic legal authority to care for a child**

Without legal authorization, they cannot make critical decisions:

- Enrolling a child in school.
- Consenting to a child participating in sports and other activities.
- Consenting to or declining medical treatments for a child.



## States offer multiple pathways for nonparents to obtain legal caregiving rights

Health / education consent	Power of attorney	Minor guardianship	Foster care	Adoption
A sworn statement by a nonparent attesting to a parent's absence that allows the nonparent to make certain medical or educational decisions on behalf of a child.	A parent signs a legal document designating a caregiver with decision-making authority on behalf of a child, such as for medical care	Court grants to a nonparent the rights and responsibilities to care for a child whose parents are unable or unwilling to do so.	Court declares parents unfit, and their child becomes a ward of the state and is placed in foster care or with relatives, under the supervision of child protective services.	Court terminates the biological parents' legal rights and transfers to new parents the full responsibility for and rights to a child.

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## What is minor guardianship?

- A legal process where an individual will petition a state court to grant guardianship of a minor to a nonparent caregiver – oftentimes grandparents– due to the parents’ inability or unwillingness to care for the child; more specifically referred to as “minor guardianship of the person”.
- Grants a nonparent duties and rights that customarily reside with a child’s parents: providing a safe, healthy, and stable home; the authority to make decisions on behalf of a child (e.g., consent to school enrollment and health-related services).
- Allows children to remain under the care of family without involving the child welfare system.

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## What is minor guardianship?

- Different from “minor guardianship of the estate”.
- Types of guardianship vary by state, but can include:
  - Long-term: “full” guardianship – typically lasts until the child turns 18.
  - Short-term: “emergency” or “temporary” guardianship – lasts ~30-180 days.
  - Narrow scope: “limited” guardianship – court sets expiration date, parents typically retain more rights and responsibilities than full, emergency, and temporary guardianship.

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## What is minor guardianship?

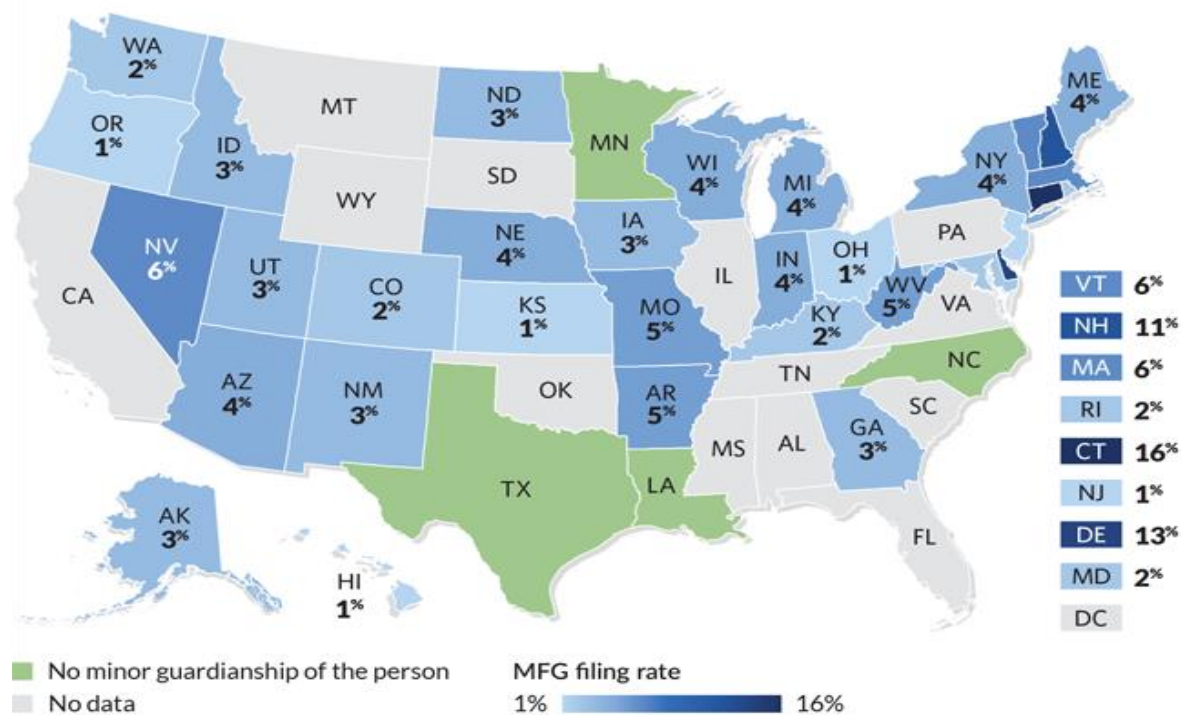
Across the U.S.:

- 46 states and D.C. allow relatives and other nonparent caregivers to privately petition the court for guardianship of a child with a living parent.
  - 4 states use other proceedings for this purpose.
- 35 states house minor guardianship statutes under probate codes.
- 24 states hear these cases in probate courts or division.

# Few nonparent caregivers in the U.S. seek minor guardianship

Figure 1  
**1 in 25 Children in Nonparental Care Were Subject to a Minor Guardianship Petition**

Minor guardianship cases as a share of nonparental care, 2017-21



Source: Pew analysis of Court Statistics Project data, state court statistical reports, data obtained directly from state court administrative staff, and Annie E. Casey Foundation's KIDS COUNT Data Center

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## Minor guardianship is under-researched

To help court leaders and state policymakers better understand the policies governing these cases, the challenges faced by courts, families, and nonparents in these cases, and ways to address them, Pew:

- **Reviewed literature** on minor guardianship and nonparent caregiving.
- **Analyzed minor guardianship statutes** in 50 states and D.C.
- **Examined court data** on minor guardianship.
- **Scanned state court and legal aid websites** for minor guardianship resources.
- **Interviewed stakeholders:** judges, attorneys, researchers, and kinship advocates.

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# Seismic shifts help explain challenges in minor guardianship policy and use

## 1) Circumstances under which minor guardianship is used:

- Original purpose was to enable probate courts — which regulate the handling of a deceased person's assets — to appoint a guardian to oversee the care and inherited property of children whose parents passed away.
- Today, it's widely used in situations involving parents who are alive, commonly with parental rights intact.

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## Seismic shifts help explain challenges in minor guardianship policy and use

### Yet...

- States haven't comprehensively updated their statutes to reflect this shift.
- Probate courts are not traditionally built to address matters of family crises involving living parents.

### Thus...

- Courts may have to retrofit laws for guardianships involving living parents.
- Families and nonparents may struggle to understand whether and how to pursue guardianship.



# Seismic shifts help explain challenges in minor guardianship policy and use

## 2) Legal representation rates:

- Until a few decades ago, most parties in a state civil case had an attorney representing them.
- Today, ~3 out of 5 civil cases have at least one side without an attorney.\*
- Research suggests this trend applies in minor guardianship cases.
- Many nonparent caregivers are low-income and likely cannot afford an attorney.

\*Source: Self-Represented Litigation Network, <https://www.srln.org/>.

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## Seismic shifts help explain challenges in minor guardianship policy and use

### Yet...

- State courts have struggled to adapt to this new norm: their procedures and processes aren't built to be used by non-lawyers.
- Legal aid providers cannot keep up with demand for services.

### Thus...

- Families and nonparents, in crises and trying to address urgent child caregiving needs, are largely on their own to identify and understand their legal options and navigate complex case steps.

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## Original minor guardianship statutes reflected societal circumstances and needs at one time

It's not that states are doing a bad job, just that statutes and court processes haven't kept pace with these shifts and could be improved so courts can better help families address urgent child caregiving needs.

A few examples...

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## Minor guardianship statutes could enhance guidance on cases involving living parents

### Consensual vs. non-consensual guardianship:

- When a parent consents to a guardianship, it's important they understand the childcare responsibilities and decision-making rights being granted to another adult.
- When a parent doesn't consent, courts need clear and convincing evidence of a need to transfer parental rights and responsibilities.

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## Minor guardianship statutes could enhance guidance on cases involving living parents, such as in:

### Iowa: IA Code § 232D.203:

- Guardianship with parental consent: “the petition shall include an affidavit signed by the parent or parents verifying that the parent or parents knowingly and voluntarily consent to the guardianship. The consent required by this subsection shall be on a form prescribed by the judicial branch...the parent or parents and the proposed guardian shall file an agreement with the court. This agreement shall state the following: The responsibilities of the guardian; The responsibilities of the parent or parents; The expected duration of the guardianship, if known.”
- Guardianship without parental consent: “The court may appoint a guardian for a minor without the consent of the parent ...if the court finds by clear and convincing evidence all of the following: There is a person serving as a de facto guardian of the minor... a demonstrated lack of consistent parental participation in the life of the minor by the parent.”

Other state examples: Maine (18-C ME Rev Stat § 5-205); Vermont (14 V.S.A. § 2626)

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## Minor guardianship statutes could enhance guidance on cases involving living parents

### Rights and responsibilities retained by parents:

- Guardians and parents with rights intact need clarity on what rights and responsibilities parents retain when a guardianship goes into effect – for example, parent-child contact, child support, or any decision-making rights.
- Courts need guidance on who is authorized to establish these rights and responsibilities, such as the court, guardian, or parent.

Leaving families and nonparents to figure this out on their own can make an already stressful situation more contentious.

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## Minor guardianship statutes could enhance guidance on cases involving living parents, such as in:

Maine, 18-C ME Rev Stat § 5-206:

An order appointing a guardian of a minor must: “specify whether the minor's parent retains any of the following rights and responsibilities after the appointment and, if any such rights or responsibilities are not retained, the reasons they are not retained [including]:

- A. A schedule of parent-child contact or a determination by the court that denial of parent-child contact is necessary to protect the physical safety or emotional well-being of the minor. The court may determine the reasonable frequency and duration of parent-child contact....The court may set forth specific conditions that must be satisfied by the parent prior to the start of ...the contact schedule;
- B. Parental rights and responsibilities as described under [domestic relations law- includes rights to make decision on “education, religious upbringing, medical, dental and mental healthcare..”]
- C. Child support”

Other state examples: New Mexico, NM Stat § 40-10B-8; Mississippi, MS Code § 93-20-206

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## Minor guardianship statutes could enhance guidance on cases involving living parents

### Other statutory gaps regarding living parents to consider:

- Basis for granting guardianship in cases involving living parents
- Types of minor guardianship
- Minor guardianship order modification and termination
- Public child welfare agency role
- Rights to counsel
- Parallel court cases involving the same child
- Family transition plans
- Resources for caregivers and families



## A handful of states have implemented comprehensive reforms

State	Year reforms went into effect	Code	Primary jurisdiction
Iowa	2020	Human Services	Juvenile court*
Maine	2019	Probate	Probate court
Mississippi	2019	Domestic Relations	Chancery court
Vermont	2014	Probate	Probate court
Washington	2021	Probate	Superior court probate division
Wisconsin	2020	Children's	Children's court*

\*Prior to passing statutory reforms, probate courts had jurisdiction over minor guardianship of the person cases.

Pew resource offers questions for policymakers to consider when reviewing minor guardianship statutes. Email: [dwhite@pewtrusts.org](mailto:dwhite@pewtrusts.org) for more info.

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## Key policy considerations:

- Do your minor guardianship statutes meet the needs of families in nonparent caregiving situations?
- Do they provide sufficient guidance in cases involving living parents?
- Do they provide for all types of minor guardianships needed?
- Are children's rights and roles outlined?
- Is there more you could do to make navigating court processes easier for families and nonparents caregivers?
- Have you established a process for assessing the effectiveness of reforms after implementation?

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# Thank you!

Darcy White

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- Report: Outdated Court Policies Can Leave Children Without a Legal Guardian, <https://www.pewtrusts.org/en/research-and-analysis/reports/2023/09/outdated-court-policies-can-leave-children-without-a-legal-guardian>

# State Examples of Major Reforms to Minor Guardianship

## Iowa

- Guardianship and Conservatorship Reform Task Force – Final Report issued in 2017
- H. 591 (enacted 2019) – Reformed Iowa’s minor guardianship laws and separated from conservatorship and adult guardianships.
- H. 610 (enacted 2019) – Companion bill to H. 591 dealt with minor conservatorships and adult guardianship reform.

## Vermont

- H. 264 (enacted 2011) – Established a committee to study jurisdiction over proceedings on minor guardianship.
- Minor Guardianship Study Committee – Final Report to the Vermont Legislature issued in 2012
- H. 581 (enacted 2014) – Reformed Vermont’s minor guardianship laws



**GUARDIANSHIP  
&  
CONSERVATORSHIP**

**PRIOR TO 2019 LAW CHANGE, REPORTS  
WERE DONE AFTER THE FACT.**

**THIS CREATED OVERSIGHT PROBLEMS  
SINCE ACTIONS HAD ALREADY BEEN  
TAKEN.**



## **2019 REFORMS:**

**ONCE GUARDIANSHIP OR  
CONSERVATORSHIP HAS BEEN  
ESTABLISHED AN ACCURATE  
ASSESSMENT OF THE PROTECTED  
PERSONS FINANCIAL  
(CONSERVATORSHIP) AND  
PHYSICAL (GUARDIANSHIP) MUST  
BE COMPLETED**

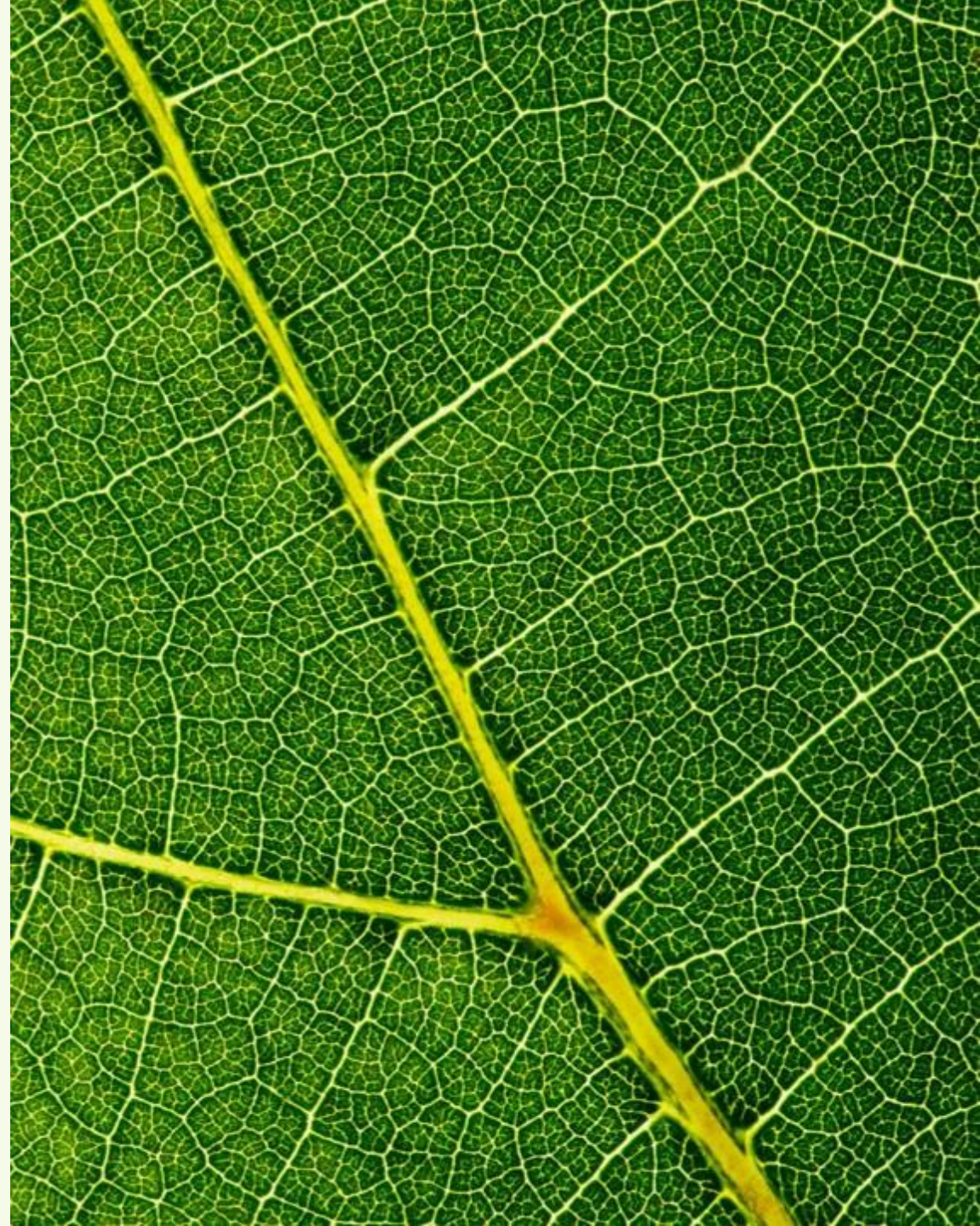


**2019 REFORMS:  
THERE MUST BE A PLAN FOR  
HOW THE  
GUARDIAN/CONSERVATOR  
PLANS TO ADDRESS THE  
NEEDS**



**2019 REFORMS:**

**COURT THEN REVIEWS THE  
PLAN AND GRANTS THE  
APPROPRIATE AUTHORITY  
TO CARRY OUT THE PLAN**



## ADDITIONAL CHANGES



- Notice of proceedings
- Less restrictive alternatives
- Background checks

- Bonds
- Guardianship for minors under the jurisdiction of the Iowa Juvenile Court

# Vermont's Amendments to Minor Guardianship Laws: Process and Policies

# Stakeholder Input

## Legislature created a study committee with the following stakeholders:

- Vermont Parent Representation Center (parent legal advocacy & support)
- Probate Judge (court with jurisdiction)
- Attorney appointed by the Vermont Bar Association (not one with knowledge)
- Social worker from Casey Family Services (lots of minor guardianships)
- Administrative Judge for Vermont trial courts (not probate)
- Vermont Kin as Parents, advocacy group for guardians, tied into Dept. for Children and Families
- Juvenile Defender (represents mostly kids in state child protection cases)
- Guardian ad litem
- Deputy Commissioner, Dept. for Children and Families (child protection)
- **Ad hoc non-appointed:** 2 members from other kin orgs, field services director from DCF, board member from Vermont Parent Representation Center
- **Missing:** Parents and guardians with lived experience

# Policy Issues to Consider

**Policy and Purposes:** 14 V.S.A. §2621 Very Important: Sets legal framework for families with children not living at home: legal decision-makers

1. Presumed interests of children best promoted in child's own home; and when parents unable, allows process for them to arrange for temporary care.
2. Families make better decisions about their children when they understand the consequences and understand the law and supports.
3. Decisions about raising children other than child's parents shall be based on informed consent unless a finding of parental unsuitability.
4. When no informed consent, parents have fundamental liberty interest in raising children unless showing of unsuitability by clear and convincing evidence.
5. Research shows that timely reunification more likely when safe and substantial contact with parents.
6. Shared understanding between parents and guardians regarding length of time and circumstances when parents can resume care and supports needed.



# Thank you for joining today!

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