



Summary of Joint Guardianship Statutes by State December 2000

Joint, or co-guardianship is an important legal option for terminally ill parents seeking to make future care and custody plans for their children. Although most states permit co-guardians, usually neither guardian is the parent of the child. Only California and Connecticut have enacted joint guardianship legislation specifically as a permanency-planning tool for parents. These statutes allow the court to appoint both the custodial parent and another adult as co-guardians of the parent's minor children. The parent and guardian share in the care and decision-making, and the parent is not required to give up custody or control. Additionally, the children are able to form a relationship with the guardian while the parent is still living. Consequently, should the parent become no longer able to care for the children, joint guardianship helps protect the children's health and well-being by minimizing disruption in their lives. Following is a general summary of the current laws and procedures related to joint guardianship. We suggest also looking at the language and specifics of each state.

- Who can nominate a joint guardian,
- How to establish a joint guardian,
- How the joint guardian's authority becomes activated,
- Triggering events,
- Involvement of the non-custodial parent,
- Relationship between the parent's authority and joint guardian's authority, and
- Withdrawing the guardianship.

State & Statute	California California State Code, Probate Code, Section 2105	Connecticut General Statutes of Connecticut, Volume XII, Title 45a, Chapter 802h*, Part II*, Sections 45a-624 to Sec. 45a-624g
Who can nominate a joint guardian	A custodial parent may nominate a joint guardian if he or she has been diagnosed with a terminal condition as documented by a licensed physician.	The last surviving parent or legal guardian may nominate a co-guardian regardless of health status.
How to establish a joint guardian	<p>Petition and court hearing to appoint.</p> <p>In some counties, a pre-hearing interview is conducted by the probate court (if the guardian and child are not related) or child protective services (if they are relatives).</p> <p>Children 12 or older must be notified.</p>	<p>Petition and court hearing to appoint.</p> <p>Children 12 or older must be notified of the hearing and the court will consider their preference.</p>
How the joint guardian's authority becomes activated	<p>The co-guardian and parent share concurrent authority upon approval of the guardianship.</p> <p>If the parent dies, the co-guardian automatically becomes the sole legal guardian without further court action.</p>	<p>The co-guardian's authority may begin immediately or upon a triggering event as specified in the court order. Upon a triggering event, the co-guardian must submit written affidavit to the court that the specified event has occurred.</p> <p>If the parent dies, the co-guardian automatically becomes the sole legal guardian without further court action.</p>
Triggering events	Not applicable.	Including, but not limited to death, mental incapacity or physical debilitation.
Involvement of the non-custodial parent	<p>Consent of the non-custodial parent is required unless the court has determined that the parent's custody will be detrimental to the child.</p> <p>The non-custodial parent, with parental rights, must be given notice within 15 days of hearing.</p>	The non-custodial parent must be served notice of the proceedings.
Relationship b/t parent & guardian's authority	Upon appointment, the parent and co-guardian have concurrent authority and must agree on major decisions unless the parent is too ill to be consulted.	Although each may act independently, once activated, the parent and co-guardian share the rights and obligations of guardianship.
Withdrawing the guardianship	A parent, guardian, or the child, can petition the court to end the guardianship if it is determined to be no longer necessary, or if doing so is in the child's best interest.	The guardianship remains in effect unless there is a further court order.

References:

- Geballe, S. (2000). Guardianship as a Therapeutic Option. *Child & Adolescent Psychiatric Clinics of North America*, 9 (2), 407-24.
- Larsen, J. (2000). *Standby guardianship training and technical assistance project: A guide for legislators, lawyers and child welfare professionals*. Circle Solutions, American Bar Association and the Children's Bureau: Washington, D.C.
- Public Counsel Law Center. (2000). *Peace of mind: Joint guardianship of the person for children whose parents are terminally ill*. [Brochure].