

Nicole A. Faille
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Family in Crisis: Is a Guardianship the Solution?

The breadths of the opiate epidemic and its social implications have been topics of discussion for some time now in New Hampshire. Often not included in these conversations, however, is the impact of opiate use on the wellbeing of users' children. Recently, there has been a noticeable increase in the need for extended family members or concerned family friends to step in to care for minor children because parents are impaired and unable or unavailable to provide adequate parental care. Perhaps, such a need is due, at least in part, to the opiate epidemic. Of course, the need for supplementation or substitution of parental rights also arises in other circumstances, like temporary absence due to military service, illness, work assignment, or incarceration. Regardless of the cause, when faced with such a need, concerned adults may think a guardianship proceeding is the only option to ensure the child receives proper care. Others may feel lost if a guardianship seems too extreme for what may be only a temporary parental absence. A proper understanding of how a guardianship is instituted can aid in determining the proper solution to a family crisis necessitating a change in parental care because a guardianship is not the only option, and in fact, may not be the best option for some families.

A concerned adult can initiate a guardianship action by registering with the Court's online filing system, electronically submitting the appropriate forms, and paying the filing fee and mailing costs. Specifically, the individual seeking guardianship, the petitioner, will file a Petition for Guardian of Minor along with a Criminal Record Release Authorization and Department of Health and Human Services Record Release Authorization for not only the proposed guardian but also each adult who would be living with the minor. The Petition requests biographical information for each party, circumstances regarding the child's care, and a

description of specific actions, omissions, or incidents that support the institution of a guardianship. Additional forms may be required if one or both of the child's parents are deceased or if the petitioner is not a New Hampshire resident.

After the initial filing, each parent will have the opportunity to object, unless the petition is filed on an emergency and temporary basis, and a hearing will be scheduled. If the parents consent to the guardianship, the petition will be granted if the Court finds by a preponderance of the evidence that the best interests of the child require it and that the proposed guardian is an appropriate one. If a parent objects to the institution of a guardianship, however, the current standard is much higher. The court must still find the proposed guardian is an appropriate one, but the petitioner must also prove by clear and convincing evidence that one of two situations required by the statute exist. One—that the child's parent or parents are unfit and thus a guardianship is required for the child's safety. Or two—regardless of parental fitness, a guardianship is required to prevent significant psychological harm to the child. For example, uprooting a child from extended family during a sensitive time to live with a biological parent who is a stranger to the child when a more appropriate guardian is available may meet this standard.

Soon, pending legislation may lessen this burden in some circumstances. The proposed bill would require a grandparent seeking a guardianship over a parent's objection due to a parent's substance abuse or dependence only to establish that he or she is an appropriate guardian and that, by a preponderance of the evidence, a guardianship is in the best interest of the child. Further, the bill would create a preference for appointment of a grandparent as guardian in such cases.

But for now, the high standard is required for ordering a guardianship over a parent's objection. Given this high standard and the proof required, the process can be daunting and negatively impact family dynamics. Thus, a guardianship may not be proper for some familial contexts. Rather, more creative alternatives can be implemented that effectively balance parental rights with the needs of the child. For example, for parents who will be absent for a short period of time or only need some temporary help in managing parental responsibilities, a power of attorney coupled with a residential schedule may provide adequate decision-making authority and a reliable schedule for the child's care. In situations where one or both parents have a concern of the other, creative provisions in parenting plans that allow for some supervision or alternate care in specific situations may provide adequate safeguards for the child's needs and preserve parental rights.

Each family is unique and deals with its own struggles and challenges. Some family crises may require a guardianship, but for others, more informal options may better fit the family's needs. The decision to file for a guardianship should thus be made after thoughtful consideration of the child's needs, parents' challenges, family goals, and family dynamics.