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# What Happens to My Kids if I am Sick or Die?

## Should I read this?

If you are a single parent, you may worry who will care for your kids if something happens to you. This explains your options.

You should also talk to a lawyer.

## What is “testamentary guardianship”?

If you are the child’s only living parent, your Last Will and Testament can name a testamentary guardian for the child. After your death, a judge will finalize the guardianship. The guardian will take an oath and will have legal guardianship duties like writing a report for the judge every few years. You can change a testamentary guardian any time before your death by changing your Will.

## What if the other parent is still alive and still has parental rights?

The court will first ask the other parent to take care of them. You **cannot** keep the other parent from taking custody if you die. Nothing in your Will can make someone else your children’s guardian.

## Why should the other parent get custody?

Only a court can legally take away parental rights. Naming a testamentary guardian in your Will does **not** end the other parent's rights.

The other parent will get custody of your children if you die, **unless** both these are true:

1. The other parent is unfit.
2. It would put the children's welfare in danger.

## What if no one can find the other parent?

If you die and the other parent is unknown or no one can find them, a court will probably approve the guardian your Will names.

You should put in your Will that you chose the guardian “because she has a relationship with the minor child. The child’s other natural parent has never known the child.”

If someone finds or contacts the other parent and the parent appears before the court, your proposed guardian may not get the court’s approval.

## What if the other parent is abusive?

If the other parent is abusive or unfit to care for the child, do everything you can to get proof. Do not make false or offensive statements in your will, other court documents, or public records. The court or other parent could use those statements against you or your estate.

You can make a legally valid Will. It must be properly written and have witnesses. In Washington, your will can be hand-written if it meets all legal requirements. Get legal advice about how to draft a will.

- 1. Your Will should name a testamentary guardian.** It should state you want your children to live with the guardian even if the other parent is alive. It should describe the relationship or contact between your children and named guardian.
- 2. Your Will should state that you want your kids raised in a home free of crime, violence, drug abuse, and so on.** Do not name the other parent, speak badly of them or accuse them of abuse. A Will is a public document. The court might consider such statements untrue or offensive. This might cause the court to give the other parent legal rights against you or your estate.
- 3. After your death, your proposed testamentary guardian must be ready to tell the court about the other parent’s abuse.** They must keep any proof against the other parent of violence, court orders, or other evidence, like your written statements.
- 4. Your Will should state that you waive (give up) any attorney-client privilege** if needed to help the named guardian get custody. A lawyer you worked with, such as during a divorce, might have confidential information

about your abusive relationship. That information could help prove the other parent unfit to have the children.

5. Your Will must say **your personal representative** (person who carries out your Will) **can use your money for legal fees** to fight for custody, because it is in your children’s best interest.

## Can my children have a guardian when I am still alive?

**Maybe.** The court might appoint a guardian for your children while you are alive **if** both of these are true:

- You are very ill. You cannot make decisions for your children.
- There is no other natural parent **or** the other parent is unfit.

A guardian would step in to meet your children’s needs, like making medical, financial, and personal care decisions. A guardianship like this does not end your parental rights. Anyone can ask the court to appoint a guardian. You can also authorize someone to make health care and/or financial decisions for your children in a Power of Attorney document if you are very ill and cannot make decisions for yourself. (See below.)

## Can I get custody of children that are not mine?

Maybe, if one of these is true:

- The children are not living with their parents.
- The parents are unfit to care for the children.

**Example 1:** A friend or relative has died. That person had asked you to take care of her children. You can file a “third-party custody action” asking for custody.

**Example 2:** a relative is too sick to care for his children. You get physical custody. You do not get guardianship. The sick parent keeps his parental rights. You take care of the children.

Read [Non-Parent Custody: Frequently Asked Questions and Answers](#).

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❖ **Under a new state law**, starting in 2021 a nonparent can ask for **legal guardianship** instead of a nonparent custody order. Nonparent custody orders already in effect will still be good in 2021. The new guardianship law will repeal (replace) the nonparent custody law.

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## Can someone adopt my child?

**Maybe.** You can give up your parental rights through the adoption process. The other parent gets notice of the adoption. They can challenge (try to stop) it.

A court can terminate (end) someone's parental rights if that parent

- did not take care of their duties as a parent
- is unfit
- has abandoned the children
- is a danger to the children

**The court might deny the adoption (not let it happen).** In Washington, courts rarely let a parent end their own parental rights, unless a third party is adopting the children.

## What is power of attorney?

Starting June 11, 2020, you can temporarily give someone your their powers regarding care, custody, and/or property of your children. You can now give someone power of attorney when you will not be available or able to provide care for any child under the age of 18 for whom you are legally responsible. You can give someone POA for as little as one day to as long as 24 months. Read [Power of Attorney for Parents](#) to learn more.

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❖ Signing a power of attorney does not end your parental rights.

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## I have a long-term illness. What can happen to my children?

The illness might use up all your money. You might not be able to care for the children.

If you can, you must make custody, guardianship, POA, and/or adoption arrangements while healthy. If you have not done so, and your children were in foster care when you die, the court can still appoint a testamentary guardianship.

A testamentary guardian, named in your Will, should be ready to give a court evidence and testimony that living with the testamentary guardian is in the children's best interests. This can include evidence and testimony about testamentary guardian's relationship with the children.

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❖ Children who are old enough can tell the court who they want to live with.

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## What is Standby Guardianship?

Washington does not have "standby guardianship." Elsewhere, this means someone you chose officially gets guardianship when you are too sick to care for your children.

In Washington, you can only informally arrange for a caretaker to help your family. The caretaker has no legal rights or authority.

## What is the Indian Child Welfare Act (ICWA)?

This federal law governs state court cases about custody of an "Indian child." An "Indian child" is all of these:

- unmarried
- under age 18
- a member of an Indian tribe **or** eligible to be a member
- the biological child of a tribe member

If a child is an Indian child, any guardianship or adoption is subject to this law. Read [Indian Child Welfare Act](#).

## Get Legal Help

**Outside King County:** Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

**In King County:** Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

**Persons 60 and Over** can call CLEAR\*Sr at 1-888-387-7111 (statewide).

**Deaf, hard of hearing or speech impaired callers** can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of your choice.

**Apply online with [CLEAR\\*Online](https://nwjustice.org/get-legal-help)** - [nwjustice.org/get-legal-help](https://nwjustice.org/get-legal-help)

CLEAR and 211 will provide a free interpreter.

Visit [WashingtonLawHelp.org](https://WashingtonLawHelp.org). It has free information about Washington laws, do-it-yourself court forms, videos about legal issues and a legal help directory.

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