

Office of Child Support **POLICY SHEET**

SUBJECT

Guardianship Policy

PS# 23-01

SUMMARY

OCS is tasked with establishing a child support obligation for a child who resides with a legal guardian who either receives Reach Up Family Assistance (RUFA) or applies for IV-D services. In these cases, OCS may pursue support from either genetic parent or both of them. This policy addresses whether and how OCS will work these “guardianship” cases. Part I of this policy explains the definition of guardianship and various types of guardianship orders. Part II of this policy addresses the factors that make a guardianship case enforceable, or not. Part III explains how to work guardianship cases, from gathering facts to drafting the filing. Part IV covers special considerations about how to file guardianship orders.

The specific process for working guardianship cases—who does what work—may vary by region. This policy provides information about how to think about and work these cases in a standardized way. However, the facts of these cases sometimes can be complex and call for an approach that differs from the norm. When in doubt, consult with your regional attorney.

POLICY

I. Guardianship Defined

A. Guardianships and Guardianship Orders

A guardianship is established by court order. In Vermont, a **guardianship order** can be issued either by the Probate Division pursuant to Title 14 of the Vermont Statutes or by the Family Division in a juvenile case pursuant to Title 33 of the Vermont Statutes. A guardianship ordered in a juvenile case typically will be transferred to the Probate Division for administration and monitoring thereafter. *See* 14 V.S.A. § 2629(b)(5); 33 V.S.A. § 5318(a)(6); 14 V.S.A. § 2624.

A court may appoint multiple guardians, or “**co-guardians**.” A co-guardianship affects the way OCS prepares a filing to establish a child support obligation. Usually the “co-guardians” reside in the same household, but sometimes they do not. If co-guardians do not reside together, this “**split guardianship**” may affect whether OCS’s case is enforceable.

A guardianship order creates a duty of support payable to the guardian. This means the Court could establish a child support obligation under which the guardian is the obligee. A guardian assigns the right to child support to the State of Vermont if the guardian receives RUFA, just like in any other “public assistance” case. A guardian typically receives a kind of RUFA grant called a “**child-only grant**,” which may affect whether OCS’s case is enforceable.

A guardianship order can come in different forms. If a guardianship is established by the Probate Division under Title 14, the Court typically will issue the order on a standard court form titled, “**Findings and Order of Appointment of Custodial Guardian for Minor.**” This order will identify the child and the guardian, or co-guardians, and include certain standard statutory findings. Sometimes the order will include additional, case-specific findings supporting the establishment of the guardianship. The Probate Division might also issue a “**Certificate of Appointment**,” which confirms that the guardianship was established and identifies the child and the guardian or co-guardians.

If the guardianship is established by the Family Division in a confidential case, the guardianship order typically will include narrative findings in support of the guardianship. If the guardianship order was issued in another State, the order may take on varying forms.

As discussed more below, we usually need to file a copy of the guardianship order as part of an establishment action to prove the guardianship’s existence. **The exception is a Vermont guardianship order issued in a juvenile case, which should not be filed with the Court because it is confidential.**

B. “Caretakers” versus Guardians and Conditional Custody Orders

Sometimes guardianship cases are referred to as “**caretaker**” cases because we think of a guardian as a child’s caretaker. But while all guardians are caretakers, not all caretakers are guardians. A caretaker is only a guardian if a guardianship is established by the Court (i.e., there is a legal guardianship). OCS can pursue a child support order only if there’s a guardianship order because a duty of support is owed to a guardian but not to a caretaker who has not been granted guardianship. *See* 15 V.S.A. § 658(b).

Sometimes the Economic Services Division of the Department for Children and Families (ESD) provides RUFA to a caretaker who has not been appointed as a guardian. In most cases, OCS will close such cases as “unenforceable” because there is no duty of support owed to the caretaker and thus no duty of support that the caretaker can assign to the State in exchange for receiving RUFA.

A **conditional custody order**, or CCO, is a type of temporary order that can be issued by the Family Division in a juvenile case. A CCO is **not** a guardianship order. This guardianship policy does not apply to a case in which there is a CCO. OCS’s policy and procedures relating to working juvenile cases would apply. If a person granted conditional custody is subsequently granted a permanent guardianship, then this guardianship policy would apply.

C. 924x Process

In cases in which a guardianship order has not been issued, OCS may have authority to collect support without establishing a child support order pursuant to 33 V.S.A. § 3902(e) and per the “924x process” appended to this policy. The 924x process is potentially usable in cases in which there is a non-zero child support order between a child’s parents and the child’s caretaker receives RUFA. This process involves OCS’s administratively, i.e. outside of court, creating a case in which the caretaker is the custodial parent and in which the non-custodial parent is the parent who is the obligor under the child support order. The child support obligation is then “moved” to the case with the caretaker without modifying the order between the parents and without establishing a new order under which the caretaker is the obligee. Support is then collected, as in any other case, so long as the caretaker continues to receive RUFA.

The 924x process should be used rarely, however, because it is difficult to implement in a way that ensures support is collected in accordance with the statute. For example, once an obligation is moved to the caretaker’s case, this case would need to be monitored to ensure the guardian’s continued receipt of RUFA, since the statute authorizes the collection of support administratively only so long as the guardian receives RUFA. The case also would need to be monitored to see if a guardianship order is issued, in which case it would be necessary, or at least best practice, to file a court action to modify the child support order between the parents and to establish an order under which the guardian is the obligee.

Failure to monitor the case in these ways can create situations in which support is collected improperly. Always consult with your regional attorney and regional manager before employing the 924x process.

Guardianship Allowing OCS to File to Establish Support?

	Yes	No
Findings and Order of Appointment of Custodial Guardian for Minor (Title 14)	X	
Certificate of Appointment (Title 14)	X	
Guardianship Order Issued by Family Court (Title 33)	X	
Conditional Custody Order in Juvenile Case		X
Guardianship Order issued by Another State	X	
Caretaker Receiving RUFA Without Legal Guardianship		X

II. Enforceability and Unenforceability

A. General Closure Reasons

Often a guardianship case may seem like one in which it would be inappropriate or inadvisable to pursue support. For instance, the non-custodial parent may have substance-abuse issues, a criminal history, or poor work history. Or, the guardian may tell us that pursuing child support may be harmful to the child in some way.

A guardianship case, however, is enforceable in the same way as all other OCS cases, with certain exceptions addressed below. This means we can, should, and, in public-assistance cases, must seek to establish a child support obligation in these cases, unless there is a reason to close them as unenforceable. Examples that would allow use of a closure reason include: (1) the non-custodial parent is receiving means-tested benefits, such as RUFA or Supplemental Security Insurance, or SSI; or (2) the non-custodial parent's "long-term" incarceration.

Reasons which make pursuing child support in a guardianship case seem inadvisable or inappropriate may not suffice to close the case as unenforceable. Consult with your regional attorney and regional manager about whether a case potentially should be closed as unenforceable.

B. Waiver of Cooperation and Good-Cause Closure

Like other RUFA recipients, a guardian may apply for a waiver from the obligation to cooperate with OCS to pursue child support. As in other cases, OCS also has discretion to close a guardianship case for "good cause." If you think there is a reason that support should not be pursued in a guardianship case which does not meet the usual definition of unenforceability, then consult with your regional attorney and regional manager about potential closure for good-cause.

C. Parentage Not Established

In some guardianship cases, parentage has not been established. Sometimes courts will establish genetic maternity before issuing a child support order for a mother to pay a guardian. **The fact that parentage has not been established is not itself a reason to close a guardianship case.** In such cases, the establishment of parentage is a necessary step toward establishing a child support order.

OCS should pursue the same efforts to establish parentage in guardianship cases as in other cases. This may mean we have no reason to close a case without filing to try to establish parentage and child support, but that the case may become unenforceable if our attempt to establish parentage fails, depending upon the reason. For instance, we might obtain negative genetic testing results for an alleged genetic father, or we may be unable to obtain a genetic testing order due to parents not participating in court. Consult with your regional attorney and regional manager about whether a guardianship case can be closed as unenforceable if parentage cannot be established.

D. Initiating UIFSA Cases

Sometimes a guardianship case involves at least one non-custodial parent who is not a Vermont resident, over whom Vermont would not have personal jurisdiction. In these cases, an initiating action under the Uniform Interstate Family Support Act (UIFSA) may be possible and should be considered. We may need to consult with the child support agency in the potential responding State prior to deciding whether to submit the establishment action. Consult with your regional attorney and regional manager about these potential initiating UIFSA cases.

E. Non-Custodial Parent in the Household

If a non-custodial parent resides in the same household as the guardian, then our case should be closed as unenforceable, even if the guardian receives RUFA. This is because the non-custodial parent is not absent from the household, and even may be helping to support the child, but, unlike in other public-assistance cases, the parent cannot be added to the “child-only” RUFA grant.

F. Split-Guardianships

OCS generally will close cases in which there is a split-guardianship (co-guardians who reside separately) as unenforceable. Consult with your regional attorney and regional manager about such cases.

G. Non-Cooperation and Unenforceability

Sometimes a guardianship case will be unenforceable if a guardian is not cooperating with OCS. For instance, if the guardianship order was issued in another State, we may need the guardian to provide us with a copy of the order to include with our establishment filing. If the guardian does not cooperate, we may be unable to obtain the guardianship order. Without the guardianship order we may be unable to prove to the court that a guardianship exists, and this may cause the case to be unenforceable.

In other cases, if one of the non-custodial parents resides out of State, or both do, the question of personal jurisdiction over the non-custodial parent, or parents, becomes complicated. We may need the guardian to provide us with information to help us assess whether Vermont would have jurisdiction. If the guardian does not cooperate, and we cannot get that information, the case may become unenforceable. Always consult with your regional attorney about cases involving complex questions regarding jurisdiction.

H. Sanctioning a Guardian

OCS will not sanction a guardian for non-cooperation. If you have a case in which a guardian is not cooperating, and the non-cooperation is hindering our being able to work the case, consult with your regional attorney and regional manager about whether the case is unenforceable.

Guardianship Closure Reasons

	Yes	No	Maybe
NCP Receives Means-Tested Benefits, e.g., SSI, RUFA	X		
NCP's Current Long-Term Incarceration	X		
NCP's Substance Abuse or Mental Health Issues, Criminal History (Excluding Current Long-Term Incarceration, or Poor Work History)		X	
Good Cause			X
Guardian's Non-Cooperation			X (Consult with Regional Attorney)
Parentage Not Established		X	
Split-Guardianship	X		
NCP in Guardian's Household	X		
Initiating UIFSA Case			X (Consult with Regional Attorney)

PROCEDURES

III. Working a Guardianship Case

Absent a closure reason, a guardianship case will be worked according to a two-step approach outlined below. The first step is to complete a questionnaire specially-designed for these cases. The second step is to prepare the motions and other documents needed for the filing based upon the information gathered from completing the questionnaire.

A guardianship case may seem complex because it involves as many as three separate OCS cases: one between the child's parents; another between the guardian and the child's mother; and another between the guardian and the child's father or alleged genetic father. Often the case between the parents is closed, but not always. Sometimes there is a case between the guardian and the child's mother but not the child's father or alleged genetic father, or vice versa.

OCS generally will file to establish support from both of the child's parents unless the case with one parent is unenforceable. If the case with one parent is unenforceable, the case with the other parent still may be enforceable, and, if so, it should be pursued. Sometimes OCS will have an open case with just one parent because the guardian completed a RUFA application (Form 137) for just one parent. In those cases, OCS may need to contact ESD about the guardian's

completing with a Form 137 for the other parent. Consult with your regional attorney and regional manager as needed.

A. [Questionnaire](#)

To gather facts and organize the case information, the first step in working a guardianship case is to complete the guardianship questionnaire. The guardianship questionnaire is a version of the checklist for parentage and establishment cases, adapted for guardianship cases. The questionnaire is part of the PAD packages for these cases.

Among other things, the questionnaire will confirm the existence of a guardianship order; list the external case ID for all pertinent cases; confirm whether there is a court case between the child's parents; and confirm whether there is a child support order between the parents and, if so, whether there's a current non-zero obligation. Other case-specific information, such as family-violence concerns, should also be documented on the questionnaire.

If it has not been provided, a copy of the guardianship order should be obtained as part of completing the questionnaire. OCS may have access to a copy of a Vermont guardianship order via the Vermont Judiciary Portal. Otherwise, we can request a copy of a guardianship order from the Court or from the guardian directly. Consult with your regional attorney if you have trouble obtaining a copy of the guardianship order.

B. Pleadings and Other Documents

After completion of the questionnaire, the establishment filing will be prepared. The composition of the filing—what motions and documents we file—will vary depending on two main factors: whether parentage is established and whether there is a non-zero child support obligation between the child's parents. The 710G and 720G packages on PAD comprise the documents for the different types of filings.

A guardianship establishment filing does not include a financial affidavit for the guardian. This is because the Court will not consider the guardian's financial circumstances as part of a child support guideline in a guardianship case.

If there are co-guardians, both guardians need to sign the complaint and be made parties in the court case, even though only one guardian will be listed as the custodial parent in OCS's case. Likewise, if there are co-guardians, each should complete a notice of pro se appearance.

Both a 710G and a 720G filing would include a non-cooperation affidavit prepared by OCS, accompanied by a copy of the Form 137, as need be.

All references to child support orders or obligations in this policy are to Vermont child support orders. In a case in which there's a child support order issued in another State for a parent, or parents, to pay a guardian, consult with your regional attorney about how to proceed with a filing.

The following is a list of pleadings and other documents to be included in the four types of guardianship filings, respectively:

1. Parentage Not Established (710G): If parentage is not established, including, possibly genetic paternity and maternity, a guardianship parentage action should be filed using the 710G package. This filing will seek to establish parentage and child support. This filing will be submitted in a new docket. This filing generally will include the following documents:

- 1) Guardianship establishment complaint, which is a version of the usual “710 complaint” adapted for guardianship cases;
- 2) Summons: one for each parent against whom we’re filing;
- 3) Guardianship order: except if the guardianship order issued in a juvenile case, in which case the order should not be filed, and the complaint should reference issuance of the guardianship order in an appropriate way. Consult with your regional attorney about how to reference a guardianship order issued in a juvenile case;
- 4) Cover Memorandum, a special form that combines and takes the place of OCS’s usual cover memorandum (OCS Form 705) and information sheet (Judiciary Form 800) by combining them into this form. No separate cover memorandum or information sheet is needed for guardianship filings;
- 5) Notice of Pro Se Appearance; and
- 6) IV-D Checklist

2. Parentage is Presumed, Acknowledged, or Established by Out-of-State Court order and No Child Support Order (710G): If parentage is presumed, acknowledged, established in a Vermont juvenile court docket, or established by an out-of-State court order, then a 710G action should be filed in a new docket.

- 1) Guardianship establishment complaint, which is a version of the usual “710 complaint” adapted for guardianship cases;
- 2) Summons: one for each parent against whom we’re filing;
- 3) Guardianship order;
- 4) Cover Memorandum;
- 5) Notice of Pro Se Appearance; and
- 6) IV-D Checklist

3. Parentage Established by Vermont Court Order and (Possibly) Zero Child Support Order (720G): If parentage is established by Vermont court order, but there is either no child support order between the parents, or there is a zero order, a guardianship establishment action should be filed using the 720G. This filing will seek a child support order. The filing will be submitted into the preexisting docket between the parents in which the child support order was issued. This filing generally will include the following documents:

- 1) Guardianship establishment petition, which is a version of the “720 Petition” adapted for guardianship cases. If there are co-guardians, both should sign the petition;
- 2) Guardianship order;
- 3) Motion to Join Legal Guardian: when filing a guardianship action into a preexisting case, it’s necessary to file to join the guardian as a party to the action;
- 4) Cover Memorandum;
- 5) Notice of Pro Se Appearance; and
- 6) IV-D Checklist

4. Parentage Established and Non-Zero Child Support Order (720G): If there’s a non-zero child support order between the parents, a guardianship modification/ establishment action should be filed using the 720G, which includes a motion to modify child support to use, as needed. This filing will seek to modify the child support order between the parents, by zeroing it, and to establish an obligation, or obligations, payable to the guardian. (This filing also would be used if there is a non-zero child support order under which an initial guardian is the obligee, and a different person is appointed as the child’s guardian.) This filing will be filed into the preexisting docket between the parents in which the child support order was issued. This filing generally will include the following documents:

- 1) Guardianship establishment petition;
- 2) Guardianship order;
- 3) Motion to Join Legal Guardian;
- 4) Motion to Modify Child Support, which will seek to zero the obligation between the parents;
- 5) Affidavit in Support of Motion to Modify Child Support: this affidavit is necessary under Vermont Rule for Family Proceeding 4.2(b). The affidavit’s contents should include the information typical for a motion to modify child support, while also including pertinent guardianship-related information. Consult with your regional attorney, as need be;
- 6) Case Accounting, showing child support arrears having accrued under the child support order between the parents;
- 7) Cover Memorandum;
- 8) Notice of Pro Se Appearance; and
- 9) IV-D Checklist

Motions in Guardianship Filing

	Verified Complaint for Establishment of Parentage and Related Obligations	Verified Petition for Support and Recovery of Debt	Motion to Join Legal Guardian	Motion to Modify Child Support Due to Guardianship
Parentage (710G): File When Parentage is Not Established	X			
Parentage (710G): File When Parentage is Presumed, Acknowledged, or Established by Out-of-State Court order and No Child Support Order	X			
Establishment With No Modification (720G): File When Parentage Established But No Child Support Order Between Parents or Zero Child Support Order		X	X	
Establishment With Modification (720G): File When Non-Zero Child Support Order Between Parents		X	X	X

IV. Filing Guardianship Orders

As with all filings submitted in the Enterprise Justice File and Serve System, OCS needs to comply with the Vermont Rules for Public Access to Court Records (PACR Rules) when submitting a guardianship establishment filing. The type of guardianship order we have will affect if and how we submit the order to the Court in Enterprise Justice. In addition, because guardianship orders often result from circumstances involving sensitive facts, special care should be taken when deciding how to file a guardianship order. Remember: the relevant fact for our filing is the existence of the guardianship, not the reasons why it was ordered. The following general rules apply. But consult with your regional attorney about how to file a guardianship order, if need be.

A. Probate Division Guardianship Order

A guardianship order issued by the Probate Division pursuant to Title 14— Findings and Order of Appointment of Custodial Guardian for Minor or Certificate of Appointment—

generally is a public document under the PACR Rules. If possible, OCS should obtain and file a certificate of appointment, because the certificate of appointment does not contain additional findings which may be based upon sensitive facts. A certificate of appointment should be filed as a public document in Enterprise Justice.

In some cases, only a Findings and Order of Appointment of Custodial Guardian for Minor will be available. This version of a guardianship order generally is a public document under the PACR Rules. But this version of the order may include additional findings which are irrelevant, or which should be treated as confidential, such as a reference to the Department for Children and Families’ involvement with the family. In some cases, it may be appropriate, or necessary, to redact additional findings included in this version of the order. If properly redacted, the order should then be filed as a public document in Enterprise Justice.

B. Guardianship Issued in Juvenile Case

A guardianship order issued in a juvenile case should not be included in a guardianship filing. Rather, the filing should reference the guardianship order’s issuance in the juvenile case in an appropriate manner. Consult with your regional attorney about this issue.

C. Guardianship Orders Issued in Another State

Consult with your regional attorney about how to file a guardianship order issued in another State. It may be necessary or appropriate to file the order as a confidential document to preserve its confidentiality under the law of the State in which it was issued or to redact findings included in the order, or both.

How to File a Guardianship Order

	Public	Confidential	Public With Possible Redactions	Confidential With Possible Redactions
Findings and Order of Appointment of Custodial Guardian for Minor Which Includes No “Additional Findings” (Title 14)	X			
Findings and Order of Appointment of Custodial Guardian for Minor Which Includes “Additional Findings” (Title 14)			X (Consult with Regional Attorney)	

	Public	Confidential	Public With Possible Redactions	Confidential With Possible Redactions
Certificate of Appointment (Title 14)	X			
Guardianship Order Issued by Another State: <i>Consult with Regional Attorney</i>				

Glossary

Guardianship Order: In Vermont, an order issued by the Probate Division pursuant to Title 14 of the Vermont Statutes or by the family court pursuant to Title 33 of the Vermont Statutes granting a person, or persons, other than the child’s parents custody of the child, and the right to make decisions related to the child’s health, education, and general well-being.

Co-Guardianship: A guardianship order appointing more than one guardian for the child.

Split Guardianship: A type of co-guardianship in which the guardians do not reside in the same household. A split guardianship generally is one in which OCS will not seek to establish a child support obligation.

Child-Only Grant: A kind of Reach Up Family Assistance grant issued to caretakers, including guardians.

Findings and Order of Appointment of Custodial Guardian for Minor: A guardianship order typically issued by the Probate Division which identifies the child and guardian, or co-guardians, and includes standard findings in support of the guardianship, and, possibly, other case-specific findings.

Certificate of Appointment: A document issued by the Probate Division confirming that a guardianship has issued and identifying the child and guardian or co-guardians.

Caretaker: A person or persons with whom a child resides other than the child’s parents. A caretaker may be the child’s legal guardian, if ordered by the court. But sometimes a caretaker has not been appointed as the child’s guardian. Only a guardianship order creates a duty of child support order to the guardian. OCS will only file to establish a child support obligation if a guardianship has been ordered.

Conditional Custody Order (CCO): An order issued by the Family Division in a juvenile case temporarily and conditionally granting someone custody of a child. A CCO may grant someone other than a child’s parents conditional custody. A CCO is not a guardianship order, and it does not create a duty of support payable to the person with conditional custody.

710G: Guardianship PAD package to use in cases in which parentage has not been established.

720G: Guardianship PAD package to use in cases in which parentage has been established.

There are additional reference materials available:

- Guardianship Reference Guide is available [here](#)
- Guardianship Process Map is available [here](#)

924x Process Quick Reference Chart

Procedures	CSS	Records Center	Reg. Manager	CRU
1. Find existing or new caretaker case and send to the Regional Manager.	X	X		
2. If applicable, ensure an OCS-924X letter is sent to both parents.			X	
3. If no contest within 10 days of the date of the letter, message Records Center to move order effective 1 st day of the month after the date on the OCS-924X.			X	
4. When order is moved, insert “R” on ORDR screen of caretaker case. Send DAIL to CRU.		X		
5. Review case. Place a “financial flag” on original case to stop the money from going to the CP and move it to the PA active case. Decide when the original case should close and the new one starts charging.				X
6. Case Worker should monitor case monthly for RUFA closure. When RUFA ends and order <u>has not been modified</u> , notify Records Center to move the order to original case and change the caretaker case status to arrears-only. (If order has been modified, arrears and status remain as is and the system monitors.)		X		
7. Send OCS-924Z notice to both parents when the obligation moves back to parent case. Send DAIL to CRU.		X		
8. Remove financial flag so money goes back to original case.				X

Date	Action	Description
04/05/2023	Created	
06/12/2023	Revised	Fixed hyperlinks and applied standard formatting
4/29/2024	Revised	Updated references from ‘Odyssey’ to ‘Enterprise Justice’