

ADOPTION

Adoption can be accomplished prior to or after the termination of parental rights. If the adoption occurs prior to the termination of parental rights, it is commonly referred to as a **private adoption**. In a private adoption, proper consent and voluntary relinquishment of the biological parents must be retained prior to proceeding. Following the receipt of the proper consents from all parents, a home study would take place, genetic, medical and social histories of the children would need to be obtained, and an accounting of all the costs associated with the adoption would need to be reviewed.

Upon approval from the court, as an adoptive parent, you would have all legal rights and responsibilities of a parent of a child and the children's birth certificates would be amended to reflect you as the parent of record.

When an adoption occurs following the termination of parental rights, it is most commonly referred to as an "agency" adoption, the agency (i.e. SRS) that has retained custody of the children following the termination of parental rights. The agency is responsible for ensuring that all proper components are completed prior to the finalization of the adoption, such as the home study and collection of complete medical records and histories. In an agency adoption, you may be eligible to receive an adoption subsidy, which is an adoption support payment, to assist you in meeting the special needs of the children. Subsidy payments usually range from \$0 to \$500, depending on the needs of the child. SRS will assess your family's eligibility for receipt of an adoption subsidy if you elect to proceed with an agency adoption.



*Children's Advocacy
Resource Center*

"Providing legal and support services for Kansas children."

The Children's Advocacy Resource Center brings together the children's advocacy projects of Kansas Legal Services.

Foster Care Questions?

1-877-298-2674

Call the Foster Care Helpline for free legal advice, or any foster care questions you may have.

Kansas Legal Services

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VI. A GUIDE TO PERMANENCY: GUARDIANSHIP, PERMANENT CUSTODIANSHIP & ADOPTION



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as the sixth in a series on foster care rights and
resources

What are my options?

CHAPTER 59 GUARDIANSHIP

A Chapter 59 guardianship establishes an individual, appointed by the court, to act on behalf of the minor child and have legal custody of the minor child. If you choose this legal avenue, you would file the petition for a Chapter 59 guardianship of the children in question and provide notice to each of the biological parents, as well as grandparents, regarding such. The petition would include your factual basis and support for your statement that the minor child is in need of a guardian. Following the initial petition for a Chapter 59 guardianship, the court may appoint a Guardian ad Litem to represent the minor child and voice what he or she believes is in the best interest of the minor child. As the petitioner, the Guardian ad Litem fees may be assessed to you by the court. It is important to note that in a Chapter 59 guardianship, parental preference is the precedent. This means that the preference of the biological parents of the minor child in question will be considered by the court.

Should the biological parents consent to the Chapter 59 guardianship, a Judge is more likely to enter an Order of Guardianship than in a contested matter. In the event that a Chapter 59 guardianship is approved by the court, as the guardian of the minor child, you would have custody of the child, provide for the child's care, education, support and maintenance.

You would also be required to file an annual report with the court regarding your activities as guardian.

For clarification, a Chapter 59 guardianship does not terminate the parental rights of the biological parents, but they will no longer have care and custody for and of the minor child(ren) when the Chapter 59 guardianship is ordered by the court. In this regard, the biological parents may also file a petition at any time, requesting that the court remove the guardian. The petition must include a factual basis for the requested removal and the court may find that a new guardian should be appointed, or that the child is no longer in need of a guardian.

In the event that a Chapter 59 guardianship is approved and ordered by the Court, the biological parents of the child may be ordered to pay child support to help the guardian(s) provide for the financial needs and care of the minor child. Guardians may also qualify for SRS assistance, such as TAF (Temporary Assistance for Families) and Grandparents as Caregivers funds, if appropriate and approved. Approved guardians should contact their local SRS offices for additional information regarding qualification and information.

PERMANENT CUSTODIANSHIP

Per K.S.A., Chapter 38 -2272, a permanent custodian may be appointed upon

- 1) The consent of the biological parents and approval of the court, or
- 2) Following the termination of parental rights.

If the rights of the parents are not terminated, consent of the parents must be obtained prior to the proceeding to a permanent custodian. Once proper consents are received and the

court approves such, as a permanent custodian, you would stand "*in loco parentis*", which allows you to execute all of the rights and responsibilities of a parent, with a few limitations. **Such limitations include:** Providing proper consent to the adoption of the minor children, marriage of the children prior to the legal age for such, and authorizing experimental medical care.

If parental rights are not terminated and a permanent custodianship is approved by the court, the biological parents may be obligated to provide child support for the children, as ordered by the court.

The court jurisdiction over the children will continue and the best interest of the children will be prevalent in the court's determinations.

If a permanent custodianship is granted following the termination of parental rights, you will have all the rights and responsibilities of a parent, as listed above, and with minimal limitations. It is important to note, however, that the court would still retain jurisdiction over the children and continue to take into account their best interests when reviewing your actions as permanent custodian. In this situation, you may also qualify for the permanent custodian subsidy (PCS) offered by the State of Kansas Social and Rehabilitation Services (SRS). To qualify, the children must be in SRS custody at the time the permanent custodianship is established, the child(ren) must not be receiving SSI benefits from the Social Security Administration, and the family must be eligible to receive Temporary Assistance to Families (TAF) from the State of Kansas. The maximum PCS allowance, per child, is \$300.00 per month.