



Custody of Grandchildren Information for Grandparents

A grandparent wishing to take on the caregiving of a child should consider their own health, financial situation, and their home environment to evaluate the best solution for the child(ren).



National Indigenous Elder Justice Initiative

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Terms to Remember

- ❖ **Adoption:** Legal relationship for child is the same as with a child born to you. The adoption ends all rights and responsibilities between the birth parents and the child. The adoptive parent will determine if the child may continue contact with birth parents or family.
- ❖ **Caregiver Affidavit:** Form that indicates you have physical custody of a child and authority to enroll child in school and make decisions about medical treatments. Each School may have their own version and school should be contacted directly.
**Note: This is not a legal document and not all schools will accept these forms. You may still be required to obtain legal Court documentation.*
- ❖ **Custody:** The protective care or guardianship of a child or dependent adult. A legal term indicating that the Court has ordered the care.
- ❖ **Physical Custody:** Refers to possession, and defines the physical location of a child.
- ❖ **Temporary Legal Custody:** Temporary legal custodians are responsible for making major life decisions regarding the health, education, and religious upbringing of a child on a temporary basis. This may be for a set amount of time, but more commonly, temporary custody will be granted to grandparents for however long it may take for the child's parents to reinstate their rights or be deemed fit to parent.
- ❖ **Permanent Legal Custody:** Permanent legal custodians are responsible for making major life decisions regarding the health, education, and religious upbringing of a child on a permanent basis.
- ❖ **Dependent Child:** A child who depends on others to provide the provision of maintenance and other necessities of life. This child may have been deprived of parental support by a person legally responsible for their care due to death, abandonment, abuse or neglect.
- ❖ **In Probate Court:** A child who is financially supported by another person.
- ❖ **In Juvenile Dependency Court:** A child who requires the protection of the court because of allegations the child was abused or neglected.
- ❖ **Fictive Kin:** Care of children by close family friends.
- ❖ **Foster Care:** Program that gives financial support to a person, family, or institution to help offset the cost of raising a dependent child.
- ❖ **Grandparent Rights:** Legal proceedings used to determine the conditions for visitation with grandchildren. These rights are not guaranteed by the Constitution and are determined by each State in Court decisions.
- ❖ **Guardianship:** A court proceeding where a judge appoints someone to care for a person under the age of 18 years. A guardian may be related or unrelated to the child.
- ❖ **Guardianship of the Estate:** Granted by probate court giving responsibility to manage any income or other assets of the child.
- ❖ **Guardianship of the Person:** Granted by probate court giving legal responsibility for a child who is not your biological child.
- ❖ **Kinship Care:** Care of children by relatives, and is a form of family preservation services.
- ❖ **Formal Kinship Care:** Involves a training and licensure process for the caregivers, and a monthly payment to help assist with costs for caring for the child, as well as support services.
- ❖ **Informal Kinship Care:** May only involve an assessment process to ensure the safety and stability of the home along with supportive services for the child and caregiver.
- ❖ **Kinship Adoption Agreements:** Refers to an agreement made between the adoption parent(s) and the birth relatives for the purpose of maintaining contact with the child's birth family after adoption; must be approved by the Court.
- ❖ **Probate Court:** Deals with probate conservatorships, non-dependent guardianships, and the estates of people that have died.
- ❖ **Ward:** Term used to describe a youth under probation through the Juvenile Delinquency Court.

Resource information found in the "Grandparents Raising Grandchildren: Resource and Information Guide," 2011. Created by the Grandparent Raising Grandchildren Task Force and the Riverside County Office on Aging.

Before Taking on Responsibility of a Child, You May Want to Consider the Following:

❖ Emotional Stress

- Ability to adjust from familial crisis
- Coping strategies for anxiety and depression
- Reliance on spirituality/religion
- Salience of tradition and culture
- Self-care strategies
- **Health promoting behaviors such as:**
 - Healthy diet
 - Exercise regularly
 - Good sleeping habits
 - Physical abilities/limitations

❖ Community Supports

- Attending community activities such as public fundraising events, school sporting events, and community picnics
- Attending farmer's markets or other craft fairs
- Attending or participating in public cultural events such as a powwow, giveaways, and other gatherings
- Having a place of worship to attend
- Interactions with and support from the child's school system

❖ Social Supports

- Finding a support group for grandparents who are caring for their grandchildren
- Having people to talk to such as; medicine person, clergy, counselors, medical providers, or a Social worker
- Making time for self-care activities such as, Crafting, Hobbies, or going to play bingo with friends or family
- Support from friends and family

❖ Health Insurance

- State Medicaid health insurance
- The Children's Health Insurance Program (CHIP)- www.healthcare.gov/medicaid-chip/getting-medicaid-chip/
- Personal Insurance through employer
- Indian Health Services (IHS)- www.ihs.gov/

❖ Financial Assistance

- **Supplemental Security Income (SSI):** A child may be eligible if they have a diagnosed disability.
- **Temporary Assistance for Needy Families (TANF):** A program intended to move low-income families from public assistance to self-sufficiency by providing cash assistance with work readiness, training and job placement services.
- **Supplemental Nutrition Assistance Program (SNAP) may also be referred to as Food Stamps:** This program helps low-income families to meet their nutritional needs.
- **Supplemental Nutrition Program for Women, Infants, and Children (WIC):** This program provides coupons for extra food along with nutrition education for women who are pregnant, or mothers of children 5 years of age and under. Eligibility is income based.
- **Non-Custodial child support:** The non-custodial parent is the person who does not have primary custody of the child and has an obligation to pay child support to the primary care provider of the child.
- **Kinship Guardianship Assistance Payment (Kin-GAP):** A state fund program for legal guardians who are raising child relatives and who are dependents of the Juvenile Court. The child must have been officially placed with the relative for an identified period of time.
- **Non-parent grants or kinship care:** If you are raising a minor child that is not your own, you may be entitled to special financial benefits. Individuals receive a monthly cash grant for each child they are caring for regardless of income.
- **Federal Foster Care Benefit (AFDC-FC):** Eligibility is based on federal and state standards and is determined by Department of Social Services (DPSS). These funds are available for children who are or have been dependents of the Court.
- **Potential Tax benefits:** Dependency Exemption, Earned Income Tax Credit (EITC), Child tax credit if you don't qualify for EITC, Child and Dependent Care Credit, and Adoption Credit.

Before Taking on Responsibility, continued:

❖ Legal Concerns

- Without legal custody you may not be eligible for Social Services, financial assistance, able to give medical consent for treatments, or school enrollment for the child. If you have physical custody of your grandchildren, the court may look more favorably upon you, and may grant you temporary or permanent legal custody, based upon your circumstances.
- Legal Guardians seek guardianship through the Court, when a child has been informally placed in your care by the child's parent.
- Power of Attorney can be granted to grandparents from the child's parent(s). Power of attorney allows the grandparent to make important decisions for the child, such as medical treatment decisions. It can also grant the grandparent important powers, such as enrollment into school.

Note: power of attorney does not mean the parent(s) are terminating their rights to child, as they can revoke the power of attorney.

- **Custody:** In the case the parent(s) lost their rights to the child under the law, the custody order comes from a judge. If parental rights have not been terminated, a grandparent must prove to a court of law that the parent(s) are unfit to care for the child.
- In the case of an incarcerated parent, depending on your state's laws, the parent(s) rights may be terminated if their sentence exceeds a designated amount of time. For example, in some states this rule will apply for a parent sentenced over 18 months in prison.
- Grandparent(s) should keep a record of all attempted contact and communication from the incarcerated parent(s). In case the parent may want to petition the Court for reinstatement of parental rights.
- If the parent(s) rights are reinstated upon fulfillment of Court requirements, they can regain custody of the child. The grandparent(s) may want to file for and establish their grandparent rights with the Court. Check with your state to inquire about what Grandparent rights are afforded under the state laws.

- A Family Law Attorney or Legal Aid can help when obtaining legal guardianship, custody or adoption.

Note: Grandparents should always check with their state or tribal laws before taking any legal actions. This resource provides general information and considerations to help assist the grandparent when considering a caretaking role. This information should not be taking as direct legal advice.

❖ **Reminder for grandparents living in tribal community or reservation lands: you can still qualify for State services and assistance programs.**

Additional Website Links & Sources:

- Child Support: http://www.huffingtonpost.com/jim-t-miller/financial-resources-for-g_b_1566625.html
- More information about Governmental assistance programs: <https://www.benefits.gov/>
- Grand Care Support Locator: <http://www.aarp.org/home-family/caregiving/>
- Grandparents raising grandchildren information guide: <http://www.rcaging.org/Portals/0/uploads/GRG/adrcresourceguide2011.pdf>
- Grandparent rights by State: <http://www.grandparents.com/family-and-relationships/grandparents-rights/grandparent-rights-united-states>
- Kinship care: <https://www.childwelfare.gov/topics/outofhome/kinship/about/>