

# Custody Rights of Grandparents

## Public Information Pamphlet



***What are the different types of custody?***

***When can a grandparent assert standing to pursue custody?***

***What factors does the court consider in determining the best interests of the child if there is a dispute concerning legal and physical custody?***

### **Custody Terms Overview**

- **Standing:** Biological and adoptive parents have the legal right, called 'standing,' to seek a custody order for their children. Anyone else wanting custody rights, including grandparents, are called 'third parties.' Third parties only have standing to seek a court order for custody rights under certain circumstances described later in this brochure.
- **Legal custody** refers to the right to make major decisions on behalf of a child. These decisions may include, but are not limited to, education, medical and dental care, and religious training.
- **Physical custody:** Refers to actual physical possession and control of the child.
- **Primary physical custody:** Right to physical custody for a majority of the time.
- **Partial physical custody:** Right to physical custody for less than a majority of the time.
- **In loco parentis** (in place of the parent): When a third party has assumed physical custody of and then acted as a child's primary caregiver for a substantial period of time. This cannot be done in defiance of a parent's wishes and the parent/child relationship

### **When can a grandparent assert standing to pursue legal and/or physical custody?**

- Grandparents must prove standing in order to seek court ordered custody rights to a grandchild. The law states that if a grandparent and, in some cases, a great-grandparent wants **partial physical custody rights** one of the following must exist to establish standing for that purpose:
  - The grandparent is the parent of a deceased parent of the grandchild; or
  - The grandparent/great-grandparent had a relationship with the grandchild by consent of the parents or court order and, in addition, a custody case has been filed by parents who do not agree on whether the grandparent/great-grandparent should have physical custody rights; or
  - Where a grandchild has lived with a grandparent/great-grandparent for 12 months or more, is then removed by a/the parent(s) and the case is filed in court within 6 months of the

removal.

- A grandparent may also seek **legal and primary or partial physical custody** of a grandchild if they meet one of the following standing requirements:
  - The grandparent is currently in loco parentis to the grandchild; or
  - A relationship with the grandparent began by parental consent or court order and the child is either a dependent child under the juvenile statute, substantially at risk due to parental abuse, neglect, drug/alcohol abuse or incapacity; or
  - Where a grandchild has lived with a grandparent for 12 months or more, is then removed by a/the parent(s) and the case is filed in court within 6 months of the removal; or
  - By ‘clear and convincing evidence’ the grandparent proves they have assumed or are willing to assume responsibility for the grandchild, they have a sustained, substantial and sincere interest in the welfare of the child and neither parent is currently caring for or in control of the child.

**If a grandparent establishes standing are they guaranteed to get court ordered custody rights?**

No. Once standing is established, the court must decide if it would be in the best interests of the grandchild for the grandparent to have physical custody and, in some cases, legal custody rights and, if so, what those rights should be. To help the court make a decision, it must consider certain ‘factors’ which can be summarized as follows as they relate to grandparents:

- The extent and quality of the relationship between the grandparent and grandchild.
- Whether the grandparent is likely to interfere with the parental relationship or try to alienate the grandchild from the parents.
- The mental and physical ability of the grandparent to care for the grandchild.
- Any history of drug/alcohol or other abusive habits and/or conduct of the grandparent or members of grandparent’s household.
- The availability of extended family relationships for the grandchild;
- The child’s sibling relationships;
- The travel distance from the grandparent’s home to that of the grandchild’s parents and other family members;
- The actual availability of the grandparent to care for the grandchild and their ability to provide for the grandchild’s needs;
- The level of conflict between the grandparent and the parents and the willingness to cooperate with one another for the best interest of the grandchild
- The impact on sibling relationships of the grandchild;
- The “well-reasoned preferences” of the grandchild.
- Any other relevant factor.

REMEMBER: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

Please use the information found in this pamphlet carefully since the law is constantly changing and the information may not accurately reflect any changes in the law that occurred following the creation and publication of this pamphlet.

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