

Custody & Visitation with Grandchildren

Do grandparents have rights to custody and visitation of their grandchildren?

Yes, under limited circumstances. Generally, the U.S. Constitution provides that parents have the right to raise their children as they see fit without interference. Just because grandparents might do a better job of raising a grandchild does not mean grandparents can interfere unless there is actual danger to a child. Nor do grandparents have any absolute right to be able to visit with their grandchildren.

When might a grandparent obtain custody of a grandchild?

Parents may agree in certain situations for a grandparent to have temporary custody of a child. To make sure this is done correctly, you should seek the help of a lawyer. So long as a parent is living, the only way a parent can lose custody of a child to a grandparent is if the parent is doing such a poor job of parenting that that child is not safe in the parent's care. A grandparent who is concerned about the safety of a grandchild has two options:

- File a dependency and neglect (D & N) petition in juvenile court in the county where the grandchild(ren) live seeking temporary custody. If at all possible, grandparents should hire a lawyer to represent them in a D & N petition. Parents who cannot afford a lawyer have the right to an appointed lawyer, and an attorney (a guardian ad litem) will be appointed to represent the child(ren)'s best interests but grandparents are not entitled to an appointed lawyer.

- Grandparents may also contact the Department of Children’s Services (DCS) if they believe grandchildren are in danger in their parents’ care. DCS cannot reveal who contacted them, so the grandparents’ identity remains confidential. If DCS’s investigation reveals that the children are being abused or neglected, DCS will take court action to remove children from the parents’ home. DCS is supposed to first place custody of removed children with relatives.

Note: When grandparents are granted temporary custody of children in abuse and neglect situations the Courts are generally required to provide services to the parents to help them regain custody of their children at the earliest possible time.

What about grandparent visitation?

If the situation between you and your grandchildren’s parents is so bad that you are completely cut out of the child(ren)’s lives, you might consider filing a petition for grandparents’ visitation rights. If you can afford an attorney, hire one because the issue of grandparent visitation is complex.

Where is a petition for grandparents’ rights filed?

Generally, the petition is filed in the chancery or circuit court where the grandchildren live. In some counties, the petition may be filed in general sessions court. The clerk of the court can tell you. If the parents were never married, the petition may be filed in juvenile court.

What is required before grandparent’s visitation can be ordered by a court?

One of the following circumstances must exist before a court can order grandparent’s visitation:

- One of the child’s parents is deceased;
- The child’s parents are divorced or legally separated from each other, or were never married to each other;

- One of the child's parents has been missing for 6 months or more;
 - A court in another state ordered grandparent's visitation;
 - The child lived in the grandparent's home for 12 months or more and was subsequently removed by the parent(s); or
 - The child and the grandparent maintained a significant existing relationship for 12 months or more immediately before the relationship was ended by a parent for reasons other than abuse or danger of substantial harm, and the end of the relationship is likely to cause substantial emotional harm to the child.
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What has to be proved to establish grandparent's visitation?

The court first has to find that a significant relationship existed (which the court presumes if the child lived with the grandparent for 6 consecutive months, the grandparent was the child's full-time caregiver for at least 6 consecutive months, or the grandparent had frequent visitation with the child for not less than 1 year), and that there would be a danger of substantial harm to the child if the relationship ended, and the grandparent visitation is in the best interests of the child.

What factors does the court consider in deciding whether grandparent visitation is in the child's best interests?

In deciding whether grandparent visitation is in a child's best interest, the judge will consider the following factors:

- Length and quality of the prior relationship between the child and grandparent;
- Existing emotional ties of the child to the grandparent;
- Preference of the child (if child is found to be mature enough to express a preference);
- Effect of hostility between the grandparent and the child in the child's presence and the willingness of the grandparent, except in cases of abuse, to encourage the parent-child relationship;
- Good faith of the grandparent who is filing the petition;

- If parents are divorced, the time-sharing arrangement between the parents;
 - Where one parent is deceased/missing, the fact that the grandparent asking for visitation is the parent of the deceased/missing parent;
 - Any unreasonable deprivation of the grandparent’s opportunity for visitation with the child by the parent;
 - Whether the grandparent is seeking to maintain a significant relationship with the child;
 - Whether awarding visitation will interfere with the parent-child relationship; and
 - Any court finding that the child’s parent/guardian is unfit.
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Can I seek grandparent’s visitation rights if my grandchild is adopted?

A grandparent may still seek visitation with a grandchild if the grandchild is adopted by a stepparent or other relative. If the child is adopted by an unrelated person, the grandparent cannot seek visitation with the child.

Can grandparent’s visitation rights be changed?

Once grandparent’s rights are established, it is difficult for a parent to try to decrease or take those rights away. A party wanting to change grandparent’s rights has to first establish a “material change of circumstances” since the last court order. If the court finds a material change, the court must also find that modification is in the child’s best interests.

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