



# Polk/Burnett Grandparents Raising Grandchildren Newsletter

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## Grandparents' Legal Rights and Options

Millions of children in this country spend at least some time in their grandparent's care. It may be an informal, part-time situation while parents work. Or, grandparents may actually be legal guardians for their grandchildren.

Increasing numbers of grandparents are also finding themselves in custody or visitation disputes that can end up in the court system.

When the Wisconsin legislature or the courts make decisions about grandparents' rights, they seek to balance two values: allowing parents to care for their children the best way they can, and doing what is in the best interest of the children.

In Wisconsin, parents' wants and wishes prevail by law over grandparents' wishes. This is intended not as legal advice, but as information to guide grandparents moving through the legal and social services system to protect the children who are so dear to their heart. Grandparents caring for grandchildren in their homes should obtain a qualified lawyer who specializes in Family Law to protect their rights and the rights of the children.

A child might live with a relative, such as a grandparent, by private arrangement or informal agreement with the child's parent. But without the legal right to make some decisions that only parents have the right to make for their child, the grandparent may not be able to do such things as enroll the child in school or get medical care for the child.

If a grandparent or adult relative feels that a child's safety may be at risk while living with his or her parents, they should first talk with the parents about the problem. If that doesn't work, the relative may contact the Department of Social Services or Department of Human

Services in the county where the child lives. The relative may make the call anonymously, or, if names are used, the report will be kept confidential. A social worker will ask for information about the child and parents, such as name, address, and date of birth. The social worker will also ask why there is a concern about the child's safety. The Human Service Agency will not tell the parent or child who contacted them. The Human Service agency will review the information that was given and decide if child protective services should look into the child's safety. If the agency does investigate, a social worker will contact the parents and the child to get more information. If the social worker finds that the child's safety is at risk, the social services agency may refer the parents to community service providers for such things as parenting or anger management classes. The social service agency also may take the child from the parent's home and place him or her with a relative or a foster parent.

The following are answers to questions that are often asked about Wisconsin laws covering visitation, custody, guardianship, and adoption.

**Visitation** is where the court sets a specific schedule of time that grandchildren are to spend with their grandparents. Wisconsin law does provide for legal visitation rights for grandparents when the parents have divorced; when a stepparent adopts a grandchild; when the grandchild's parent has died; and when the grandchild was born out of wedlock and paternity has been established. However, if the parents of the grandchildren are in an intact marriage, grandparents cannot petition the courts for visitation rights if the parents choose not to let the grandparents see the grandchildren.

**Legal Custody** gives the grandparent the court-ordered right and responsibility to make major decisions concerning the child, except for specific decisions stated by the court or the parties in the final court order. Major decisions may include giving the child permission to marry, to enter military service, or to get a driver's license. Grandparents or other relative caregivers also can authorize non-emergency health care and make choices about school and religion.

Reasons for giving custody to a grandparent may be because the parent abandoned or neglected the child, needs to be gone for a long period of time, or similar situations that would greatly affect the welfare of the child.

**Physical Placement** allows a child to be placed with a grandparent, who then has the right during the placement to make routine daily decisions for the child. Someone else, however, would have the legal right to make major decisions for the child (e.g., medical, counseling, or educational decisions).

**Legal Guardianship** means grandparents have been appointed by a court to look after the care, custody, and day-to-day responsibility for the child.

The court may appoint a **temporary guardian** if it finds that the minor must have a guardian appointed immediately. In Wisconsin, the temporary guardianship may not be longer than 60 days, and it may be extended only once for another 60 days. Arrangements must then be made for the child to be returned to the parents, for permanent guardianship, to be placed in a foster home, or to be placed for adoption.

In a **standby guardianship**, a person is named who will be responsible for a child if that child's parent or guardian is unable to do so or if the parent or guardian dies. A standby guardian may be appointed for a minor at any time, but isn't responsible for the child as long as the minor has one living parent who is willing and able to be the legal

guardian.

**Adoption** gives an individual or a couple full legal and financial responsibility for parenting a child. It is the only way to have the relationship legally permanent. In Wisconsin, parental rights must be terminated before an adoption can take place.

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## Sources:

*Grand Resource Guide Legal Chapter (Grandparent/Relatives Raising & Nurturing Dependent Children Resource Guide)*. Leadership for the GRAND Resource Guide was provided by Dr. Mary Brintnall-Peterson, Program Specialist, UW-Extension, Ethel Dunn, Executive Director, Grandparents United for Children's Rights and Barbara Robinson, Bureau of Aging and Long Term Care Resources. The GRAND Resource Guide can be found at:  
<http://www.uwes.edu/ces/flp/grandparent/view.html>



*Grandparents Rights & Responsibilities*, UW-Extension Publication #3702

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## Additional information on grandparents' rights and responsibilities:

"Grandparents and Other Relatives Raising Children: Grassroots Concerns and Solutions From Across the United States" (January 2000), published by Generations United

"Relatives Raising Children: An Overview of Kinship Care" (1997), edited by Joseph Crumbley and Robert L. Little, published by The Child Welfare League of America

"Grandparents: Raising Our Children's Children" (2000), by Doris K. Williams, University of Idaho

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*Reviewed by Mary Brintnall-Peterson, University of Wisconsin-Extension, Program Specialist in Aging.*

## Websites:

<http://www.AARP.org/getans/grandparents.html>

<http://www.uwex.edu/ces/flp/grandparent>

<http://www.uwex.edu/ces/flp/grandparent/view.html>

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