

LEGAL ISSUES FOR GRANDPARENTS  
RAISING GRANDCHILDREN AND OTHER  
YOUNG FAMILY MEMBERS



Issues encountered by grandparents who seek to acquire the legal authority to care for and make decisions for their grandchildren.

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and the assistance of the Civil Practice Clinical students  
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**Disclaimer — Please read**

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

## **WARNING!**

**Before you proceed with using this packet, you should ask yourself the following questions:**

### **1. Have I tried to consult a private attorney?**

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

### **2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?**

There are some agencies which provide legal assistance for free to certain groups of individuals. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own. What follows is a list of legal service agencies that may or may not be available to help with your case:

**Land Of Lincoln Legal Assistance**

Serves the 65 southernmost counties in Illinois

**Toll free: 877-342-7891**

**For additional information, you may visit their website at:**

**[Http://www.lollaf.org](http://www.lollaf.org)**

**Prairie State Legal Services**

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-331-0617

**<http://www.pslegal.org/>**

**Coordinated Advice and Referral Program for Legal Service**

serving Cook County, 312-738-9200

**and Will County**

815-727-5123

## **The Legal Issues of Raising Grandchildren or Other Young Family Members**

### **In General**

The Superior Rights Doctrine means:

- The natural or surviving parent has the right to custody and control of their minor child and the direction of their education;
- The natural parents have to voluntarily relinquish custody of the child(ren) or be found unfit to remove custodial rights.

### **Best Interest of the Child**

- In any proceeding concerning a child--such as custody, guardianship, or visitation--courts use the standard of what is in the **best interest** of the child. However, sometimes the court will make a ruling that will resolve the case before it gets to the "best interest" hearing.

## **Why Do I Need Legal Custody/Guardianship?**

To acquire the authority necessary to care for a child and meet the child's financial, medical and educational needs. Without legal authority, the grandparent may not be able to obtain medical records or medical care for the child, control the child's finances, or enroll the child in school.

## **Five Ways to Legally Obtain the Right to Care for a Child in Illinois:**

- Under the Illinois Marriage and Dissolution Act-Custody proceedings
- Illinois Probate Act-Guardianship proceeding
- Juvenile Court Proceedings
- The Habeas Corpus Act-Habeas proceeding
- The Adoption Act-Adoption proceeding

## **Custody under the Illinois Marriage and Dissolution Act**

**Custody**– the custodian may determine the child's upbringing, including but not limited to, his/her education, health care and religious training, unless otherwise limited by the court. The custodian has the general care and control of the minor's person and estate of the child.

- A **non-parent** can file a petition only if the child is not in the physical custody of one of his/her parents.
- When one of the parents is deceased, a grandparent who is the parent of the deceased parent can file a petition for custody if, at the time of the parent's death:
  - The surviving parent has been absent for more than one month without the deceased parent knowing his or her whereabouts;
  - The surviving parent is in State or Federal custody; OR
  - The surviving parent received supervision or has been convicted of violence toward the deceased parent or the child, or has been convicted of violating an order of protection entered for the protection of the deceased parent or the child.

### **Grandparent Visitation Rights**

(Effective January, 2007)

- In most cases, the child must be one year old or older.
- Grandparent can file petition if one parent has unreasonably denied the grandparent visitation, and at least one of the following conditions exist:
  - The child's other parent is deceased or has been missing for at least three months;
  - A parent of the child is incompetent as a matter of law;

- A parent of the child has been incarcerated in jail or prison for the three months prior to the filing;
  - The mother and father of the child are divorced or legally separated and at least one parent does not object to the grandparent having visitation;
  - The child was born out of wedlock and the parents are not living together; for paternal grandparents (the parents of the minor's father), paternity must have been established by the court.
- Grandparent visitation rights end upon termination of parental rights or non-relative adoption of the child.

### **Legal Guardianship under the Illinois Probate Act:**

#### **When can you file a petition for guardianship?**

A non-parent can file a petition for a hearing only if one or more of the following apply:

- The child has no living parent, adoptive parent, or adjudicated parent;
- The child has no living parent whose whereabouts are known;
- The child has no living parent who is willing and able to make child care decisions;
- Any living parent's parental rights have been terminated;
- The parent or parents have notice of the hearing and fail to object;
- The parent or parents voluntarily relinquish custody;

- Some courts require written documentation of voluntary relinquishment
- If both parents are living, both must voluntarily relinquish custody
- The State or the Department of Children and Family Services (DCFS) intervenes in the parent-child relationship, and the child is in need of a guardian because the child has been abused or neglected.

## **Two Types of Guardianships:**

### **Guardianship of the Person and Guardianship of the Estate**

#### **Guardian of the Person**

- Authority over minor's residency, care, custody, and education (health and personal care)
- File regular reports with court

#### **Guardian of the Estate**

- Responsible for care, management, and investment of minor's estate (similar to a trustee)
- Need court approval for most transactions affecting the minor's estate and
- File financial accountings as ordered by the court.

No need for an estate guardian if the minor

- Has no current or anticipated assets, other than personal possessions, and/or
- Their income is derived solely from social security.

### **“Stand-By” and “Short Term” Guardianship**

In either a stand-by or short-term guardianship, a parent can not interfere with rights of another [living/fit](#) parent.

A parent has to designate a guardian in writing AND:

- Give the other parent proper notice
- The other parent has to also consent or fail to object to the guardianship after given proper notice

### **Purpose of a “Stand-by” guardian-**

Allows a parent to designate who receives guardianship of the child in the event of parent death, incapacity or other inability to function in parental role.

- Does not take effect until time of parent(s) incapacity.

## Purpose of a "Short-term" guardian-

Allows a parent to designate an immediate guardian for a child for not more than 60 days (or shorter if written in the document)

- A short-term guardian of the estate applying/receiving benefits

- Takes effect

- Parent can terminate guardianship early



guardian can not act as except for government or other

without any court action

terminate guardianship

The statutory form to appoint a short-term guardian is found at **755 ILCS 5/11-5.4**

## **JUVENILE COURT PROCEEDINGS**

### **A Minor Can Be Removed From His/Her Parent(s) If The Court Finds:**

- The minor was abused or neglected;
- The minor is at risk of harm from his or her parent(s) or custodian(s);
- The minor requires authoritative intervention;
- The minor is addicted to drugs or alcohol; or
- The minor is delinquent.

### **Roles A Grandparent Can Play In A Juvenile Proceeding:**

- Party petitioner or party that contacts DCFS, the police, or the State's Attorney's Office regarding the care of the minor;
- Respondent (person responsible for care of the minor prior to court proceeding);
  - As a respondent the grandparent would be entitled to notice of the juvenile proceedings
- Grandparents may also be utilized as a temporary or permanent placement of the minor;
- Or intervene as a party in the action.

### **Temporary Placement/Custody**

- This is the first opportunity for grandparents to seek custody, either on their own or through placement by DCFS.
- A hearing for temporary custody of minor(s)—often called a shelter care hearing—must be conducted within 48 hours, not counting weekends and holidays, of the minor(s) removal from the parents for all matters except delinquency cases.

### **Adjudicatory Hearings:**

- Once a temporary placement of minor is arranged, the matter is set for an adjudicatory hearing.
- At the adjudicatory hearing, the Court hears allegations and determines whether the minor is abused, neglected, or dependent.

### **Dispositional Hearing:**

- Court determines what is the best interest of the minor and the public.
- Determines who will receive custody of the minor.
- If the parent of a child who was abused, neglected, or dependent and made a ward of the court does not fulfill the requirements of the court in attempting to regain custody of the child within 12 months, the parent may be declared unfit and adoption proceedings may begin.

### **Delinquency Hearings:**

- In delinquency cases, a detention or shelter care hearing must be held within 40 hours of the minor being taken into custody.
- During the detention or the sentencing hearing of a delinquent minor, the court may decide to place the minor with the grandparents if the detention is not warranted AND the minor's parents are not a suitable option.

As a general rule, the earlier the grandparent becomes involved, the greater the success of obtaining temporary custody of the minor(s).

## **THE ILLINOIS ADOPTION ACT**

### **Adoption**

- Terminates the parental rights of the minor's parents, and transfers those rights to the grandparent adopting the minor.
- Parental rights cannot be terminated unless the court finds the parent(s) unfit or the parent(s) consent to the adoption.
- Adoption is the most final and permanent solution for the child; once it is accomplished, the rights of the natural parents are permanently severed.

### **Where to File the Petition**

- Where the petitioner (person seeking the adoption) resides, if he or she is an

Illinois resident;

- The county where the minor resides or was born; or
- The county where one of the natural parents resides.

### **Consent of the Natural Parents**

- Parents can terminate their rights voluntarily by consenting to the adoption or by surrender of the child to an agency.
- Consent must be writing
- Consent or surrender is irrevocable unless the parent can show it was obtained by duress or fraud.
- Consent or surrender must be made by both parents, unless one parent is deceased or it is otherwise not required by the Adoption Act.

### **Petition for Adoption**

- The grandparent must file a petition for adoption under the Adoption Act.
- The grandparent need not be a resident of Illinois.
- If the grandparent is married, both spouses need to bring the petition.
- If known, the court will need the names and last known addresses of the parents.
- The court will also need to know if the parent is a minor or disabled.

### **Court Hearing**

- The court will determine the validity of the parental consent or surrender.
- A guardian ad litem will be appointed for the minor child

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guardian ad litem  
 appointed if the

parent is a minor or under a legal disability.

If the parents are found unfit, the child may be:

- Made a ward of the court and placed in the custody of the petitioner OR
- Adopted immediately.

## Birth Certificate

- After being adopted, the child is issued a new birth certificate.
- The adoption files and records are to remain confidential.

## Habeas Corpus

### Writ of Habeas Corpus

- Challenges the custody commands the determination
- The person **challenging** custodian or guardian's valid.



of the minor by another and of the legality of the custody. custody needs to show the custody of the minor is not

- The court looks to the best interest of the child.

## Other Alternatives

### Illinois Power of Attorney Act:

Illinois Power of Attorney Act, 755 ILCS 45/1-1

- Some schools and medical facilities honor written instruments that delegate these decisions.

**School:**

- Guardianship is often required by a child's school in order for a grandparent to enroll them, but this is not a law.
- The child may be enrolled, tuition-free, in the district where the child is residing.

**Parents Seeking Return Of Children**

- Parents may initiate legal proceedings to seek the return of their child(ren).
- The courts will look at:
  - The circumstances under which the parents lost or voluntarily gave up custody;
  - The length of time the child has been living with the grandparents;
  - Any change in the circumstances the parent alleges at the time the petition for return is filed.

**Financial and Medical Assistance****Aid to Families with Dependent Children (AFDC)**

- Federally funded but administered by the state.
- Provides cash assistance to households with dependant children.
- Child must be deprived of parental support and under the care of and living with a “caretaker relative”; grandparents raising grandchildren are caretaker relatives.

### **Medicaid**

- Federal program providing health care benefits to needy persons.
- Children who receive AFDC are automatically covered under Medicaid.

### **Additional Assistance**

#### **WIC (Women, Infants, and Children):**

WIC is a supplemental nutrition program that provides nutrition education, counseling, and food vouchers to help children get the food they need for proper growth and development; administered in Illinois by the Department of Human Services

- You must be a parent, guardian or caretaker who has an infant or child younger than 5 years of age. Your income must be within the WIC guidelines and the WIC clinic must find you have a medical or diet health risk like low iron, low weight gain, or need to improve your diet.
- Contact WIC at 1-800-843-6154

### **Temporary Assistance to Needy Families (TANF)**

TANF provides temporary financial assistance to help pay for food, shelter, utilities, and expenses other than medical for pregnant women and families with one or more dependent children.

- Contact TANF at 1-800-843-6154

### **Tips for Grandparents Raising Grandchildren in Illinois:**

- Program administered through the Illinois Department on Aging
- Provides information and referral assistance for grandparents raising their grandchildren
- Contact the Senior Help Line at 1-800-252-8966

### **Extended Family Support Program**

- Administer through the Illinois Department of Children and Family Services (DCFS)
- DCFS works in conjunction with local agencies to provide assistance to adults caring for the children of relatives in an effort to stabilize the caregiver's household.
- The children do not have to be abused or neglected
- Contact DCFS at 1-800-232-3798

### **Parent Help Line**

- Listens to the concerns of caregivers and suggests people that can assist you.

- The hours are 10:00 a.m. to 10:00 p.m.
- Contact the Parent Help Line at 1-88-727-5889

### **AARP**

- Website offers a great deal of information relating to grandparents raising grandchildren in areas such as housing, education, and legal matters.
- Go to <http://www.aarp.org/>
- Or phone 1-888-OUR-AARP (1888-687-2277)

### **The Foundation for Grandparenting**

- News and Resources for Grandparents Raising Grandchildren.
- Online: <http://www.grandparenting.org/>

### **Children's Health Insurance**

- Information on state programs for free or low- cost health insurance.
- Online: <http://www.allkidscovered.com/>
- In Illinois call 1-866-ALL-KIDS (1-866-255-5437)

### **United States Government Site for Grandparents Raising Grandchildren:**

- Links to Benefits & Assistance, Health & Safety Resources, Reports & Publications, and State Resources.
- Online at <http://www.usa.gov/Topics/Grandparents.shtml>

