



Grandparents as Parents: Legal Aspects of Caring for Your Grandchild

More than 8 percent of children in the U.S. now live with their grandparents or other relatives, which is an increase of more than 40 percent during the past 10 years. Grandparents are raising 5.6 million of these children according to the U.S. Census Bureau. According to the American Association of Retired Persons, 44 percent of grandparents have assumed this responsibility because of substance abuse by the parents.

Seventy-seven percent of grandparents raising their grandchildren are between the ages of 45 and 64, and 23 percent are 65 and older. Many are on Social Security, which means there is little money to support dependents. In many instances, the grandparents are on Medicare, and there are no provisions for health coverage for children.

If your grandchild needs someone to care for him or her and you have agreed to accept this responsibility, there are many decisions that must be made. Since you are older than when you raised your children, consideration must be made for the fact that you could be obligating yourself for responsibility of the child for the next 10–15 years, depending on the age of the child. As a grandparent, you must decide what you believe is right for the child, yourself, and your family.

Why Do You Need Legal Help?

Many grandparents who are trying to raise their grandchildren feel very helpless and alone.

One of the most important sources of support is the legal system. Remember that the law is a tool, and a lawyer is someone who can help you use that tool most effectively. Establishing the best type of legal custody for the child is one of the first decisions that should be made, and a lawyer can play an important role in the decision-making process.

Lawyer Selection

An experienced lawyer can advise you about the consequences of the different types of legal custody and help you determine what type would be best for your particular situation. He or she can help you work out agreements with the parents and represent you in court when seeking this custody. If your grandchild needs cash benefits or medical coverage from the government, a lawyer can help with this, too.

You should shop around for a lawyer who meets all of your needs. Select a lawyer who has worked with cases similar to yours, one who listens, shows respect, and can most effectively represent the best interests of you and the child. It is important to have at least one session with a prospective lawyer before you decide who to hire.

If You Can't Afford to Pay

Even if you can't afford to pay, you may still be able to obtain good legal help. The following suggestions may help you locate assistance:

- *Legal Services*. Also known as Legal Aid, these government-sponsored law offices help low-income persons with common legal



problems. The lawyers handle many cases similar to yours and have a lot of expertise in the family courts. Call the Texas Legal Services Center at (512) 477-6000 or the toll-free Legal Hotline for Texans at (800) 622-2520 if you don't know how to contact your local Legal Services office.

- *Law school clinics.* If there is a law school near you, see if they have a clinic that represents grandparents in child welfare or custody cases. A law student will work with you, supervised by an experienced lawyer. To find out what programs exist, call the law school dean's office.
- *A pro bono lawyer.* Some private lawyers in Texas volunteer to work for free on a case where the welfare of children is at stake. If you need to find a lawyer to help you decide what legal remedy is best for you and to represent you in court, but cannot afford one, you can call Texas Lawyers Care at the State Bar of Texas at (800) 204-2222, and ask for

help in finding a pro bono lawyer.

- Call your local Area Agency on Aging at (800) 252-9240. Their family caregiver specialists have many resources to help you decide what is best for you.

Lawyers have an ethical duty to do their best in every case, whether or not the client is paying. If you feel you are not getting good service, talk to your lawyer or your lawyer's supervisor about the problem.

Types of Legal Custody

In most states, there are three possible ways to obtain legal custody—an order for managing conservator in family court (custody order), a guardianship of the child in probate court, and adoption.

- *Custody Order.* With a custody order, you are responsible for the child's day-to-day care, which includes seeking medical treatment for the child and enrolling the child in school. You can ask for limits on the parents' visits;

Give Children Needed Nutrients

The Food Guide Pyramid groups the food children need for growth and development.

Children should eat foods from each of these pyramid groups—bread, cereal, rice, and pasta; fruit and vegetable; dairy; and meat and meat substitutes.

Following the Food Guide Pyramid gives children a variety of foods. However, they also should eat an assortment of foods from within each group.

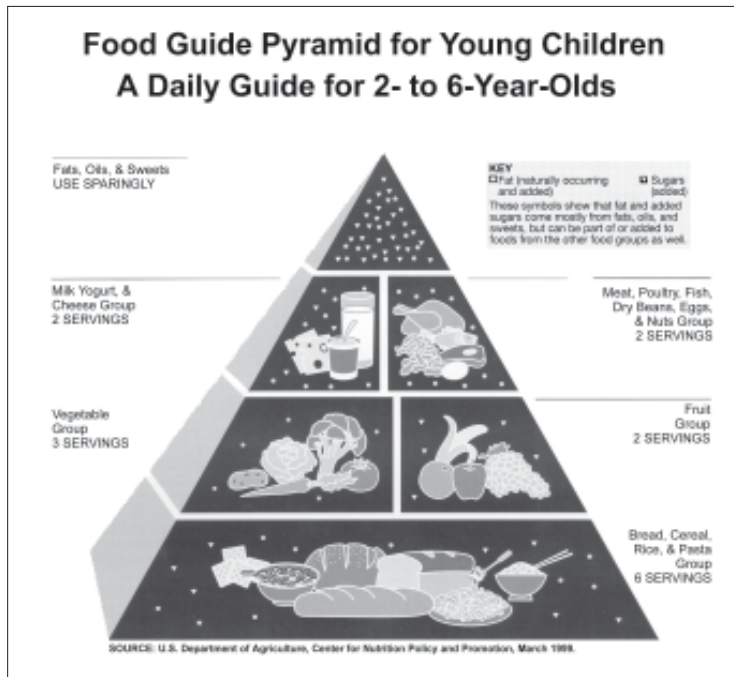
To provide nutrients needed for growth and development, children need to eat several child-size portions

from each food group daily. They need six to 11 servings of bread, cereal, rice, and pasta;

five to nine servings of fruits and vegetables; and two servings of meat, poultry, fish, dry beans, eggs, or nuts.

Up to age 10, children need three eight-ounce glasses of milk, served in 1/2- to 3/4-cup portions. At age 10, milk consumption should be increased to about four cups a day to help strengthen bones

during the adolescent growth spurt.



however, the parents will continue to have a legal relationship with the child. They will have a right to visit (unless a judge says they can't), and they can someday ask a judge to give custody back to them. They will also be required to pay some child support. Many families like the custody order because it allows the parents a legal role. Parents who can pay child support and/or visit regularly can be very helpful to the grandparent. A custody order may be a good choice if there is a chance that the parents will take the child back. If there is a problem with a parent, ask your lawyer to make sure court records state why the parents cannot care for their child. This may be needed for later custody petitions.

- *Guardianship.* Like a custody order, legal guardianship means you accept day-to-day responsibility for the child while the parents retain some rights. The primary difference is that guardianship is usually granted in the probate court, which has different rules than the family court where custody orders are made in Texas. Each court has its own rules and its own standards. In most counties in Texas, legal guardians must return to court each year to file a report on their care of the child and on their finances. Check with your lawyer to see if this applies in your county. If you are trying to decide on legal custody or legal guardianship, talk with your lawyer about:
 - ◆ which choice would cost more, take longer, or require return trips to court;
 - ◆ which choice would affect cash benefits or health insurance coverage for your grandchild; and
 - ◆ which choice would affect the parents' ability to visit or to ask for custody of their child.

Decisions on these questions will vary from county to county in Texas. Knowing the answer can help you decide which choice is right for your situation.

- *Adoption.* With adoption, you become the child's legal parent in every way. The legal relationship between the child and the child's parents of birth ends, and you can decide if and when the parents can visit. The birth parents will never again have the right to ask a

judge for custody of the child. It may seem strange to adopt your own grandchild, but in some cases, it may be the best choice. It is the only way to have the relationship legally permanent. This is a very serious step and one that requires very careful thought about the stress on family life. It is not the best choice for all families since it can sometimes cause conflict with the child's parents and more hurt to your grandchild. The primary reason to choose adoption is if you truly believe it will make your grandchild more safe and secure. It is important to note that if either of the child's parents object to the adoption, it can be hard to accomplish. Hiring a lawyer is of the utmost importance. Adoption is a life-long process that brings with it many responsibilities.

No matter what type of custody the grandparents obtain in court, it saves a lot of family conflict if an agreement can be reached before the court appearance. Two ways to do this include:

- *Negotiation.* Your lawyer can talk with the lawyers that represent each of the parents, or you can sit down together with the lawyers to work out a plan.
- *Mediation.* After you talk with your lawyer, you and the parents can sit down together without lawyers present but with a person trained to help people work out agreements.

Remember, always consult your lawyer before you agree to or sign anything. This will help you have the type of custody that is best for you and your grandchild.

Emergency Protection

If you or your grandchild's safety is in jeopardy, there are laws that can protect you. Once you have any form of legal custody, you may be able to get:

- *A protective order.* This allows a judge to keep someone who is threatening to do harm away from you and your grandchild. Violation can result in arrest of the person the protective order is against. These orders can sometimes be obtained at the City Attorney or District Attorney's office for free. If you have to call the police before you have a protective order, ask the officer how to get a protective order.

- *Supervised visitation.* The family court judge can order this at the same time that an order for managing conservatorship (custody) is granted, if it is asked for at that time. It means the visit may take place only in a safe setting with someone watching. This person could be someone who works for the court or a community or private clinic.

It is your responsibility to make sure that both of these types of orders are not violated. The police should be called every time there is a violation. These orders were issued for the safety of you and your grandchild, so you must not feel guilty about insisting they are followed.

Consent Laws

In Texas, a few counties have what is called “consent laws.” A parent gives someone the right to enroll a child in school and to seek medical care for the child without going to court, but the parents must sign a form. Check with support groups, schools, your local Area Agency on Aging, or a doctor’s office for a copy of the form. Remember, this gives you no protection if you and the child’s parents disagree.

Conclusion

If you are faced with any of the legal concerns mentioned here but are not able to hire an attorney, you might do the following:

- Call your local bar association or the State Bar of Texas at (800) 204-2222 to see if there are any lawyer referral services available in your county.
- Call your local Legal Services office.
- Call the Area Agency on Aging at (800) 252-9240.
- Call the Texas Legal Services Center at (512) 477-6000 or the Legal Hotline for Texans at (800) 622-2520 for a referral to any of the

Websites to Visit for More Information

Texas Legal Services Center:

www.tlsc.org/Community_Education/community_education.htm

Texas AgriLife Extension Service, Grandparents Raising Grandkids:

<http://grandparentsraisinggrandkids.tamu.edu>

above services or to speak with an attorney for emergency advice.

If you are going to parent your grandchild, you need to feel comfortable with all aspects of your new life. Addressing the legal issues of this arrangement can protect both the child and the grandparent.

Child Support

If a grandparent is raising a grandchild, the child’s living parents are still responsible for paying child support, unless the grandparents have adopted the child. If grandparents have custody or a guardianship, many judges will require the parents to pay support.

There are positive sides to child support:

- It helps pay the bills.
- It shows that mom and/or dad care enough to help.
- By paying support, parents stay more involved with their children.
- Parents who pay support tend to visit more.

Child support should be negotiated or ordered at the time of any custody or guardianship agreements or at the entry of such court orders. Texas has minimum child support guidelines in the state statutes (laws) that courts must follow. They can be used to help parents and grandparents agree on a fair amount.

If the parents were not married when the children were born, the father must go through a legal process called “establishing paternity” before support can be collected from him. The process may be simplified if the father consents to paternity. It may require a blood test if he denies he is the father.

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