

Kansas Legal Services

A non-profit law firm and community education organization helping low and moderate income people in Kansas



www.kansaslegalservices.org

Grandparent Rights - Updated 2016

Kansas Legal Services has an article, updated in 2016, that outlines these rights in easy to understand words.

- It is provided through the link [HERE](#).
- If you want a more lawyerly item, please email Paul Shipp, shipp@klsinc.org.

Below is *brief* summary of the article, available [HERE](#).

TOPICS:

- 1) I want to see my grandchildren, but the parent/legal guardian will not let me, what can I do?
 - 2) I have defacto custody of my grandchild, and so what do I need to do to set up legal rights so that I can do things a parent would normally do?
 - Power of Attorney
 - Foster Care or Kinship Care
 - Legal Guardianship/Permanent Guardianship
 - Adoption
-

I want to see my grandchildren, but the parent/legal guardian will not let me, what can I do?

Try to work it out between the parties without resorting to legal action. You first have to ask for visits and have it refused. If that doesn't work, then the short answer is you have to sue.

Your rights will greatly depend in Kansas on the existing bond you have with your grandchild. To get rights to visitation, you must show a "substantial relationship" with the child. The visits must also be shown to be in the best interest of the child. Lastly, the court has to give great weight to

the decision of the parents about the issue, unless you can show that their decision is improper or unreasonable.

- If the case involves a divorce case, no matter how old, or a paternity case: File a Motion to Intervene and a Motion for Grandparent's Rights. Include the case number from the original case in your motion. Your motion must explain in detail why you have a serious link with the child. It should also outline why it's in the child's best interest (beyond "it's good for kids to see their grandparents").
- If there is no case on file: You will have to file a Petition with the court where the grandchild lives. This can get complex and will almost always need an attorney's help.

In most cases, you will need to have a trial and prove the issues above. You can't really predict how much time you will get to see the child. A good rule is that the greater the relationship the more time you will be given.

I have defacto custody of my grandchild, and so what do I need to do to set up legal rights so that I can do things a parent would normally do?

There are several options for grandparents to get the legal power over their grandchildren. The question becomes which is better. The article does a better job of explaining the pros and cons of each option.

The options are: 1) Power of attorney, 2) Foster care or kinship care, 3) Legal guardianship/ Permanent guardianship, and, 4) Adoption.

Power of Attorney:

- This is the easiest to get if the child was freely left with you. It makes a good short-term solution.
- You need a certified statement from the parent(s) as to what you are allowed to consent to or have access to.
- The grandparent should keep the original signed document. Then make copies to give to the relevant agencies (school, kid's doctors, etc.)
- Some agencies may need an original, in which case the parent(s) should sign more than one original document. The grandparent should still keep one of the originals.

Foster Care or Kinship Care:

- When the state has become involved and there is some sort of juvenile proceeding (CINC-Child In Need of Care cases) and the grandparent or other relative is the foster home placement.
- The court will issue specific orders. Those orders can be used by the grandparent to get done legally whatever needs to be done. As long as you confer well with the court and social workers, then you should be taken care of.
- If your grandchild is involved in such a proceeding and you want to get involved: You can ask the court to appoint you an attorney at no cost. If your income is too high, then you may have to hire an attorney.
- Keep in mind that when the grandparent is providing foster care, they should be receiving child support of some kind for the grandchild.

?Legal Guardianship/Permanent Guardianship:

- This is a more long-term fix. It has the bonus of not stripping the parent by design of all their rights. This can be done in a CINC case or freely between a grandchild's parent(s) and the grandparent. It can also sometimes happen without the consent of the parent(s).
- Here, the grandparent becomes the "legal guardian" of the child and becomes in charge of their care and control. The grandparent would be overseen by the court. They would have to, from time to time, appear in court to give reports about the status of the child. When the condition that caused the need for the custody is resolved, and the parent is ready to resume their duties, then it simply ends.
- ?It can be a permanent solution where the grandparent only wants to assume duties until the child turns 18. There are some issues with insurance companies that may arise. Also, if the grandparent dies while the child is in their care, the child does not have any legal right to inherit or collect social security survivor's benefits.
- Guardianships can be expensive to set up, depending on what your local attorneys charge.

Adoption:

- This is the most extreme option! Make sure you understand the consequences of adoption before deciding to pursue it.
- For a grandparent to adopt, the parent must give up their rights to the child. If they don't give up their right, then the grandparent has to prove parental unfitness. The grandparent must then ask for the parent's rights to be ended.?
- This means that the parents will no longer have any duty to the child. The parents will no longer have a say in the child's upbringing. They would also have no duty to pay for the child any longer. The adoptive parents (the grandparents) would legally have to do all things for the child. This includes supporting them money-wise.
- The child would then be able to inherit from the adoptive parents. They could also receive social security survivor's benefits, if under 18, when the grandparent dies.

Over the age of 60?

Contact the **Elder Law Hotline** with any legal questions.

This is a toll-free service provided at no cost to you!

1-888-35-ELDER (35337)

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<http://www.kansaslegalservices.org/node/460/grandparent-rights-updated-2016>

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