

## Grandparents Raising Grandchildren: Custody Options<sup>1</sup>

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**Goal:** To provide grandparents with information about Florida's legal system as it relates to grandparents raising grandchildren.

Grandparents face many responsibilities in their new role. If you become a long-term care provider, you will be affected by the legal system. You can be an advocate for your grandchild's rights by knowing about the system and where to go for help.

Florida has one of the highest numbers of grandchildren living in grandparent households. In the past, there were few rights given to relative caregivers. Now, these rights are improving. For example, Florida has approved a program that pays relatives to care for dependent children called the Relative Caregiver Program. For non-dependent children, low-income relatives may apply for Temporary Cash Assistance (See [Financial Assistance: FCS2188a](#)).

Your legal rights will be determined by how much responsibility you accept for your grandchildren. By knowing your legal rights, you will have more control over what happens to them. Before you make a decision concerning your grandchild, always remember to ask yourself, "What will happen if I...?"

### CUSTODY OPTIONS

In caring for grandchildren, grandparents have several custody options. To decide which options match your needs, you must become familiar with legal terms. Courts classify families in two ways:

- families with dependent children
- families without dependent children

A family with a dependent child receives ongoing supervision by a case worker from a local Community-Based Care (CBC) provider. A child can become dependent on the State if s/he has been abused, neglected, or abandoned by a parent. Dependent children are also referred to as "adjudicated dependent."

Families without dependent children do not receive ongoing supervision by a CBC provider. The custody options available for families without dependent children are not the same as those with dependent children. In Tables 1 and 2 of this publication, you will find specifics of these custody options: Table 1 outlines options for families without dependent children, whereas Table 2 outlines custody options for families with dependent children.

After familiarizing yourself with the various custody options described in Tables 1 and 2, review the situation scenarios that follow and decide which custody option would be best for that grandparent or other relative.



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**Table 1. Custody Options for Non-Dependent Children (not under supervision of the Department of Children and Families)**

	<b>Description</b>	<b>Grandparent's Rights</b>	<b>Parent's Rights</b>	<b>Best Choice If...</b>
<b>Informal/Physical Custody</b>	<ul style="list-style-type: none"> <li>• Most common</li> <li>• Not considered legal custody</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparent has no legal right to make important decisions for child</li> <li>• With durable Power of Attorney from parent, grandparent's custody is strengthened</li> <li>• Power of Attorney can be taken away at any time by the parent who granted it</li> </ul>	<ul style="list-style-type: none"> <li>• Parents can take child back at any time</li> <li>• Parents still have legal rights</li> </ul>	<ul style="list-style-type: none"> <li>• Parent and grandparent are in agreement</li> </ul>
<b>Temporary Custody</b>	<ul style="list-style-type: none"> <li>• Legal form of custody</li> <li>• For a specific length of time, possibly until age 18</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparent can strengthen this custody by moving the case to dependency court if the parent proves to be unfit</li> <li>• Custody order determines the decisions grandparents can make for the grandchild</li> </ul>	<ul style="list-style-type: none"> <li>• Because it is legal custody, the parent cannot terminate this custody, only the courts can revoke this custody</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparent and parent are in agreement</li> <li>• Grandparent is not trying to strengthen custody by proving parent to be unfit</li> </ul>
<b>Guardianship</b>	<ul style="list-style-type: none"> <li>• Legal form of custody</li> <li>• Two types: person and property (material belongings)</li> <li>• Permanent until child is 18 or court removes guardianship</li> <li>• Next to adoption, this is one of the most secure and permanent relationships</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child</li> </ul>	<ul style="list-style-type: none"> <li>• Parental rights do not have to be terminated</li> <li>• Requires court order to be changed</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents desire long-term commitment and want authority to make decisions</li> </ul>
<b>Adoption</b>	<ul style="list-style-type: none"> <li>• Most permanent legal custody</li> <li>• Can happen when parent consents or court has terminated parental rights</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child</li> <li>• Grandparents no longer eligible for State benefits unless: <ul style="list-style-type: none"> <li>○ They are income eligible</li> <li>○ The child was adopted through the State, in which case the grandparents may become eligible for an adoption subsidy</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Parents lose their rights</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents are determined to have the most secure, permanent custody for the child</li> <li>• Parent's rights have been terminated</li> </ul>

**Table 2. Custody Options for Dependent Children (Adjudicated Dependent)**

	<b>Description</b>	<b>Grandparent's Rights</b>	<b>Parent's Rights</b>	<b>Best Choice If...</b>
<b>Court-Ordered Placement</b>	<ul style="list-style-type: none"> <li>• Grandparents have physical custody</li> <li>• Department of Children and Families (DCF) mandates ongoing supervision</li> <li>• Community-Based Care (CBC) provider has supervising authority</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents can make day-to-day decision about grandchild</li> <li>• Grandparents are provided with needed services by a CBC caseworker</li> </ul>	<ul style="list-style-type: none"> <li>• Parent can work on case plan to get child back</li> <li>• Parent is provided with needed services by CBC caseworker</li> <li>• Parents will have to sign for major medical procedures for the child</li> </ul>	<ul style="list-style-type: none"> <li>• You believe parent is working hard and is committed to following the case plan to get child back</li> </ul>
<b>Temporary Legal Custody</b>	<ul style="list-style-type: none"> <li>• Grandparents have court-ordered legal custody</li> <li>• DCF mandates ongoing supervision</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents can make important decisions about grandchild with minimal CBC supervisions</li> </ul>	<ul style="list-style-type: none"> <li>• Parent has visitation rights</li> <li>• Parent can work on case plan to get child back</li> <li>• Parents will have to sign for major medical procedures for the child</li> </ul>	<ul style="list-style-type: none"> <li>• You are uncertain if parent will follow through with required case plan</li> </ul>
<b>Long-Term Legal Custody</b>	<ul style="list-style-type: none"> <li>• Option granted after 6 months of CBC supervision with temporary legal custody</li> <li>• More secure and permanent arrangement than placement or temporary legal custody</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have full authority over grandchild</li> </ul>	<ul style="list-style-type: none"> <li>• Parents can regain custody if they can prove that: <ul style="list-style-type: none"> <li>○ The situation that has caused them to lose custody has changed</li> <li>○ Living with parents is best for the child</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Parent consents to grandparents having long-term legal custody</li> <li>• Parent's rights have been terminated</li> <li>• Parent does not follow case plan as instructed</li> </ul>
<b>Adoption</b>	<ul style="list-style-type: none"> <li>• Most permanent legal custody</li> <li>• Can happen when parent consents or court has terminated parental rights</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents have all authority over the child.</li> <li>• Grandparents no longer eligible for State benefits unless: <ul style="list-style-type: none"> <li>○ They are income eligible</li> <li>○ The child was adopted through the State, in which case the grandparents may become eligible for an adoption subsidy</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Parents lose their rights</li> </ul>	<ul style="list-style-type: none"> <li>• Grandparents are determined to have the most secure, permanent custody for the child</li> <li>• Parent's rights have been terminated</li> </ul>

**Situation Scenarios**

1. After taking care of her grandchild for over three years, Mrs. Johnson wants to secure the most permanent custody for her grandchild. What is her best option?
2. Mrs. Simmons' grandchildren just moved in with her due to parental drug abuse. She is uncertain that her daughter will be willing to follow her case plan to get her children back. What option does Mrs. Simmons have?
3. Mr. and Mrs. Garcia agree to take care of their grandchildren while their parents re-establish themselves in a new location. What is the best custody option?
4. Mrs. Smith has been caring for her grandchildren for over six months. During that time, the family has been supervised by a DCF caseworker. Mrs. Smith wants to seek a more secure and permanent arrangement because her daughter is not following her case plan. What options are open to Mrs. Smith?

*(See bottom corner of this page for possible answers)*

**WHERE TO FIND HELP ABOUT LEGAL ISSUES**

If you need additional information about legal matters, contact the following services.

**Lawyer Referral Service:** This is a public service of the Florida Bar Association. By calling **1-800-342-8060**, you will be referred to a lawyer. The lawyer will provide an initial 30-minute consultation for free or a small fee.

- **Attorney:** Look in the yellow pages for one who specializes in family law.
- **Department of Children and Families:** If you call **1-800-342-8025**, you can find out about the services available in your community.
- **Family Mediation:** The number for your area is found in the blue pages (government pages) of your phone book. Look under Court Administrator's office.
- **Department of Social Services:** The number for your area is found in the blue pages of your phone book under Social Services.

**FOR MORE LEGAL INFORMATION**

*Florida Kinship Center—Kinship Care Warmline*  
A statewide emotional support line for kinship caregivers in Florida. 1-800-640-6444  
<http://www.flkin.org/>

*Generations United, Grandfamilies State Law and Policy Resource Center*  
<http://www.grandfamilies.org/>

**References**

AARP Grandparent Toolkit  
[http://www.aarp.org/family/grandparenting/articles/grandcare\\_toolkit.html](http://www.aarp.org/family/grandparenting/articles/grandcare_toolkit.html)

Florida Kinship Center (2008) *Kinship Care Legal Handbook*. University of South Florida School of Social Work, Tampa, FL. Retrieved from:  
<http://www.flkin.org/Legal000001.asp>

<b>Answers to Situation Scenarios:</b>
1. adoption
2. temporary legal custody
3. physical custody
4. long-term legal custody