

Louisiana Grandparents Raising Grandchildren Resource Guide



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This is a guide to provide grandparents who are raising their grandchildren with basic legal and social services information. If you need legal advice specific to your situation, please contact an attorney. If you would like information about the law in Louisiana, visit the legal self-help page located at the Governor's Office of Elderly Affairs website at www.goea.la.gov/resources/legal-self-help-page/ or review Louisiana's on-line guide to free legal help, located at www.louisianalawhelp.org.

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This public document provides general legal information
and does not take the place of consultation with a
licensed attorney about your specific facts

GRANDPARENT VISITATION RIGHTS IN LOUISIANA

A grandparent in Louisiana may receive court-ordered visitation with a grandchild in several instances:

- 1) When the parents of the grandchild have filed a divorce or custody case in court, the grandparent and step-grandparent may ask for reasonable visitation rights. The request will be granted only if the judge believes visitation would be in the best interest of the grandchild according to the following factors:
 - A) The length and quality of the prior relationship between the grandchild and grandparent;
 - B) Whether the grandchild is in need of special care and guidance which the grandparent can best provide;
 - C) The grandchild expresses a preference on whether or not to visit and is sufficiently mature;
 - D) Whether the grandparent will improperly use the visitation to poison the grandchild's feelings for the parents; and

E) The mental and physical health of the grandchild and grandparent.

Unlike the grandparent, a step-grandparent must also convince the judge that extraordinary circumstances exist. An example of an extraordinary circumstance is drug abuse by the parents that endangers the grandchild.

2) Even if the parents never file a divorce or custody case in court, a grandparent may receive court-ordered visitation with their grandchild if the child's parent dies, is declared incompetent by a court, or is jailed for a long period of time. This applies to married parents and non-married parents who live together. A judge must conclude that visitation is in the best interest of the grandchild.

3) When married parents have not filed anything in court but have been separated for more than six months, the grandparent may obtain court-ordered visitation with their grandchild. However, the grandparent must convince the judge both that extraordinary circumstances exist that would harm the grandchild and that visitation is in the best interest of the grandchild.

4) A grandparent may get court-ordered visitation with a grandchild who has been placed in foster care by the State because of abuse or neglect by the parents.

GRANDPARENT CUSTODIAL RIGHTS IN LOUISIANA

Grandparents may receive legal custody of their grandchildren. Legal custody entitles grandparents to be the primary caretakers of their grandchildren, and entitles the grandchildren to live with their grandparents. The court may award legal custody to grandparents in the following circumstances:

- 1) The grandparents prove that the grandchildren would be substantially harmed if they remain or are placed in the custody of the parents. Also, the grandparents must prove they have been, or could provide in the future, a wholesome and stable environment for the grandchildren; Grandparents should understand that the test applied by the court does not simply mean that the children would be better off with their grandparents. For instance, if the parents allowed the grandchildren to stay out late at night despite bad grades at school, the grandparents might believe the grades could be improved if their grandchildren lived with them. However, that would probably not meet the substantial harm test. Examples of substantial harm to grandchildren include but are not limited to threats to their physical safety, threats to their emotional well-being, and abandonment by the parents;
- 2) If parents are abusing their child:
 - a) The grandparents may file an ex parte rule for custody asking the court to award them

immediate custody of the grandchild, without a court hearing, because the facts show that immediate and irreparable injury will result to the grandchild OR

b) The grandparents may request a temporary restraining order on behalf of the grandchild, asking that the grandparents be given temporary custody of the child. This procedure requires a court hearing.

A judge could grant an immediate order of custody in either situation.

It is always better to seek advice from an attorney to determine which approach best suits the grandparents' needs.

3) Grandparents may receive legal custody of their grandchild when the State has obtained custody of the grandchild because of abuse or neglect. The State must try to place abused or neglected children with relatives before they are placed in foster care.

VOLUNTARY TRANSFER OF CUSTODY

If both parents agree that the grandparents should have custody of the child, they may sign a Voluntary Transfer of Custody. This document is an agreement which transfers custody from the parents to the grandparents and is signed by the judge. It can be permanent or temporary. However, if the parents should

ever change their minds about the custody arrangement after the document has been approved by the judge, the parents must obtain the approval of the judge before custody can be returned to them. If one of the parents is unwilling to agree to the transfer of custody, the court could refuse to sign the document. Even a parent who has not had any meaningful contact with the child and is not listed on the birth certificate or has not signed a document declaring to be the parent has the right to be given legal notice of the proposed transfer. A notice is not required only if the identity of the other parent is truly unknown.

PROVISIONAL CUSTODY BY MANDATE

Provisional Custody by Mandate is a Power of Attorney by which a parent may authorize a grandparent to provide care for the grandchild. The document must be signed in front of two witnesses and a notary. It can have a duration of up to one (1) year and can be revoked at any time by the parent. The document does not transfer legal custody and does not have to be approved by a judge. It merely allows the grandparent to do such things as enroll the grandchild in school or obtain medical care for the grandchild.

Caveat: Grandparents should check with individual school boards to determine if that parish will allow the child to be enrolled with a Provisional Custody by Mandate or whether the grandparent will need legal custody to enroll the grandchild in school.

Louisiana does have a law which allows doctors and schools to provide services for a grandchild without the parents' consent if the grandparent signs an affidavit stating the grandchild lives with the grandparent and the grandparent is unable to contact the parents after reasonable efforts. However, the decision to provide services based on that affidavit is left up to the doctor or the school.

ADOPTION

Adoption is very different from legal custody. If a grandparent adopts a grandchild, the parents' rights are terminated. The parents will no longer have the right to visit or the obligation to support their child. In contrast, if the grandparent is awarded legal custody, the parents still have a right to visit the grandchild and an obligation to financially support the grandchild.

Grandparents may adopt their grandchildren when the parents voluntarily surrender their parental rights. Additionally, grandparents may adopt their grandchildren in the following circumstances:

(1) The grandparent has had physical or legal custody of the grandchild for at least six months prior to filing for the adoption and granted custody and either:

(2a) The parents have refused or failed to comply with a court order of support without just cause for a period of at least six months; or

- (2b) The parents have refused or failed to visit, communicate, or attempt to communicate with the grandchild without just cause for at least six months; and
- (3) The adoption is in the best interest of the child.

PUBLIC BENEFITS FOR GRANDFAMILIES

The Department of Social Services offers two major programs that most commonly intersect with the needs of grandfamilies in Louisiana: Relative Foster Care and Kinship Care Subsidies. The Department offers other programs and benefits that parents and relatives raising children can receive if they meet the eligibility criteria of that particular program. In addition, grandparents raising grandchildren can approach other state agencies to receive supportive services such as health insurance and medical assistance (Medicaid) administered by the Louisiana Department of Health.

The major highlights of each program are the following:

1. **Foster Care** provides services and benefits to those grandparents and other relatives who have gone through the formal licensing process to become a foster care parent as approved by the State. Relative foster care parents must meet the same licensing standards as non-kin foster parents.

Grandparents and other relatives who are licensed foster care parents receive the same foster care payments as non-relative foster parents. They may also receive other benefits available to all non-relative foster parents and foster care children such as cash assistance (welfare) through the Family Temporary Assistance Program (FITAP), food stamps, special education services, health insurance through LaCHIP or Medicaid, and other child care subsidies. A relative who has been granted legal custody or guardianship of a child is not eligible to participate in foster care for the purposes of receiving financial assistance and other public benefits. Foster care and adoption services are administered by the Department of Children and Family Services. On average payments to foster care parents are about \$570 per child per month. This is not viewed as a payment to foster parents for raising the child; rather, it is to meet the costs of caring for the child and meeting his or her needs. In addition, the agency provides for the medical needs of each child, therapy expenses, and evaluations. Foster care parents may also be reimbursed for travel expenses to take children to medical appointments.

2. Kinship Care Subsidy Program.

Louisiana's Kinship Care Subsidy Program (KCSP) provides cash assistance per month for each eligible child who resides with a qualified relative other than a parent. This is for relatives who have not qualified as foster parents. This subsidy is about 40 percent less than the board and care rate provided to foster care parents. A child may also be eligible for cash assistance from the FITAP program (welfare);

however, the child may only receive assistance from one of the programs. FITAP payment is about half of the Kinship Care Subsidy. To qualify for a subsidy under KCSP, kinship caregivers must meet these

eligibility criteria, among others:

- Have or get, within one year of enrolling in the program, legal custody or guardianship of the minor relative;
- Have an annual income of less than 150% of the federal poverty threshold;
- Have neither of the child's parents residing in the applicant's household; and
- Agree to pursue the enforcement of child support obligations against the parents of the child with the assistance of the Department of Social Services.
- However, a grandparent or other relative can ask the State to waive this provision if "good cause is established" meaning that it is not in the best interest of the child to pursue child support enforcement.

Social Services Resources for Grandfamilies

Additional legal information is available by visiting the following websites:

The Governor's Office of Elderly Affairs has a legal self-help page on its website at

www.goea.la.gov/resources/legal-self-help-page/

The legal self-help page lists the top websites for seniors as well as brochures on numerous topics that can be read or printed.

www.louisianalawhelp.org is Louisiana's online guide to free legal information on such topics as custody, grandparents rights, housing, consumer issues and government benefits. It also lists legal services by parish.

Department of Children and Family Services

[Website: www.dcfs.la.gov](http://www.dcfs.la.gov)

Report Child Abuse: 1-855-4LA-KIDS (1-855-452-5437) toll-free, 24 hours a day, seven days a week

DCFS Customer Service Center: 1-888-LAHELP-U (1-888-524-3578)

EBT Card Customer Service: 1-888-997-1117

Medicaid and LaCHIP

For medical benefits for an eligible child 1-877-252-2447 or <http://ldh.la.gov/page/222>

Social Security Office

[Website: www.ssa.gov](http://www.ssa.gov) or call 1-800-772-1213
Deaf or hard of hearing TTY: 1-800-325-0778
Information and application for Social Security Dependent Benefits

Child Support, Kinship Care, SNAP, FITAP Applications & Information

Website: <http://www.dss.state.la.us/cafe>

Email: LAHelpU.DCFS@la.gov

Customer Service: 1-888-LAHELP-U (1-888-524-3578)

Grandparent Support Groups

Grandparents Raising Grandchildren Information Center of Louisiana

<https://lagrg.org>

Office phone: (225) 810-3555

Fax: (225) 216-2662

P.O. Box 15275

Baton Rouge, LA 70815

Email grgoffice@yahoo.com

Office Location:

7732 Goodwood Blvd. Suite 204

Baton Rouge, LA 70815

By Appointment Only

For Information about support groups in your area,

Call (225) 810-3555

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