

# The Grandparents' Guide to Custody & Visitation in Pennsylvania



PA Institutional Law Project

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## **About the Pennsylvania Institutional Law Project**

The Pennsylvania Institutional Law Project seeks to deliver civil legal services to the institutional population of our Commonwealth. Difficulties with access and the unique nature of institutional legal issues requires a specialized method of delivering such services. The project was created and designed to meet the needs of low income residents of our prisons, jails, state hospitals and state centers.

The goal of the institutional Law Project is to ensure equal access to justice for indigent institutionalized persons. We are a non-profit organization administered by the PA Legal Aid Network.

For additional copies of this free self-help guide for residents of Pennsylvania, please contact:

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## I. ABOUT THIS GUIDE

Every family is unique, and every child is precious. No one knows that better than grandparents who are actively present in their grandchildren's lives. Some grandchildren may even live with a grandparent for various reasons. For example, sometimes a grandparent takes over when the child's parent must be absent for a reason beyond their control, such as illness, military deployment, incarceration, or death. In other families, a temporary babysitting arrangement may have grown into full-time residence.

This manual is about the legal options for grandparents related to visitation and custody of their grandchildren. This guide will outline legal options for grandparents and provide definitions of concepts like "custody" and "parental rights." This guide also describes legal procedures that may be helpful. The Appendix has forms to file with the court and an analytical tool to guide choices. Grandparents who is caring for grandchildren in their home, or have recently done so, may want to know about certain options that are provided under Pennsylvania law. They may ask the court to grant full legal custody, partial legal custody, or visitation rights.

### **REMEMBER:**

**Use this guide to size up the situation and plan ahead.**

## II. WHAT VISITATION AND CUSTODY MEAN

Physical custody is "the actual physical possession and control of a child."<sup>1</sup> Parents generally have the right to custody of a child. The United States Supreme Court ruled in *Troxel v. Granville* that parents have a constitutional and fundamental right to raise their children.<sup>2</sup> Therefore, the courts must consider a parent's rights to control a child's upbringing.<sup>3</sup>

Because families now have many different shapes and structures, some states like Pennsylvania give visitation or custody rights to grandparents under certain circumstances. In Pennsylvania, the statute that governs this area is the Custody and Grandparent's Visitation Act (GVA).<sup>4</sup>

**Visitation** rights allow a person to visit with a child, but only under the supervision of the legal custodian.<sup>5</sup> **Partial custody** allows a person to visit a child at certain times without the legal guardian's supervision.<sup>6</sup> **Shared custody** (sometimes called joint custody) is when both parents (or caretakers) have shared legal or physical custody to assure that both have frequent and continuing contact with the child.<sup>7</sup>

A grandparent might have **physical custody** of a grandchild if the child lives with the grandparent and the grandparent takes care of the child. However, a grandparent does not have

<sup>1</sup> 23 Pa. Cons. Stat. § 5301; Pa. R.C.P. 1915.1(b).

<sup>2</sup> 530 U.S. 57 (2000).

<sup>3</sup> *Id.*

<sup>4</sup> 23 Pa. Cons. Stat. § 5311-13; *see also* Pa. Cons. Stat. § 5303. These statutes appear in the Appendix of this guide.

<sup>5</sup> 23 Pa. Cons. Stat. 5302; Pa. R.C.P. 1915.1(b).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

legal custody unless a court has assigned it to her by issuing an order. **Legal custody** is “the legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious and educational decisions.”<sup>8</sup>

For example, the parents of a new baby start out with legal custody of the baby. If the baby lives with the parents, then the parents also have physical custody. If the parents then choose to leave that child with the grandparents long-term, and give consent for the grandparents to handle the routine, day-to-day decisions about the grandchild’s schedule, clothing, activities, and meals, the grandparents have physical custody.

Even so, the parents still have legal custody, so they are the only ones who can make major decisions for the child. Major decisions include those involving medical procedures, or the choice of a school, or participation in religious activities of a particular faith or denomination. In order for a grandparent to handle the major decisions for a grandchild, the grandparent must seek **legal** custody from the court.<sup>9</sup>

Someone who is not a blood relative may also be granted standing to seek custody if they have assumed the duties of the parental relationship so that a court would consider them to be *in loco parentis* to the child.<sup>10</sup>

**REMEMBER:**

- **A grandparent who is handling the major decisions for a grandchild may want to ask the court for legal custody of the child.**

### **III. DIFFERENCES BETWEEN CUSTODY AND VISITATION**

There is a difference between partial custody rights and visitation rights. Only someone with custody can take the child on an outing or trip without asking permission. If a grandparent has only visitation rights, then the child’s custodial care-giver will make the decisions about where visits can occur.

With visitation rights, a grandparent does not automatically have the right to take the grandchild on an outing away from home. This difference is important if the grandparent wishes to take the child to visit an incarcerated or hospitalized parent if it is against the preference of the other parent.

**REMEMBER:**

- **Visitation rights allow a person to visit with a child, but only under the supervision of the legal custodian. Custody rights allow a person to visit the child without supervision of the legal guardian.**

<sup>8</sup> 23 Pa. Cons. Stat. § 5302; Pa. R.C.P. 1915.1(b).

<sup>9</sup> *Id.*

<sup>10</sup> *Walkenstein v. Walkenstein*, 663 A.2d 178 (Pa. Super. Ct. 1995).

#### **IV. WHEN TO ASK FOR VISITATION OR CUSTODY**

Grandparents can request visitation or legal custody only under certain conditions. A grandparent cannot seek visitation or custody rights under if the parents are alive and live together, and the children never resided with the grandparent.<sup>11</sup>

A grandparent may seek **partial custody or visitation** if the grandchild's parent has died,<sup>12</sup> if the parents are divorced, or have been separated for six (6) months.<sup>13</sup>

A grandparent may also seek **partial custody or visitation** if a child has lived with the grandparent for 12 months or more, and then is removed from the grandparent's home by the child's parents.<sup>14</sup>

A grandparent may request **physical and legal custody** if she or he:

- (1) has genuine care and concern of the grandchild; and
- (2) began her or his relationship with the grandchild with the consent of one of the parents of the child or because of an order of court.

#### **AND**

- (3) she or he can say yes to one of the following:
  - (a) for at least 12 months in the past, she or he assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child;
  - (b) she or he is taking responsibility for a child who has been adjudicated to be dependent through Child Protective Services;
  - (c) she or he believes the grandchild is substantially at risk due to parental abuse, neglect, drug or alcohol abuse, or mental illness.<sup>15</sup>

The grandparent's request to the court should start out by showing she or he is permitted to make the request.

#### **REMEMBER:**

- **The court expects the request to state how the grandparent qualifies to file. Specify exactly how the conditions listed in the statute are fulfilled.**

#### **V. IF THE SITUATION IS URGENT**

There is an additional reason why a grandparent may wish to act promptly to request visitation or custody rights from the court. If the grandchild's mother or father has been absent for six months, it is possible that court proceedings may begin proceedings for the termination of the mother or father's parental rights. Termination is not automatic, of course. Nevertheless, it is legally permitted in certain circumstances, including if the parent has refused or failed to perform parental

<sup>11</sup> *Dietrich v. Dietrich*, 17 Pa. D. & C.4th 270 (Berks 1992).

<sup>12</sup> 23 Pa. Cons. Stat. § 5311.

<sup>13</sup> 23 Pa. Cons. Stat. § 5312. The Superior Court of Pennsylvania held that a grandmother was entitled to seek custody rights for the child of her son six months after he and the child's mother parted ways, even though the couple had not been married. See *Stonerook v. King*, 843 A.2d 1278 (Pa. Super. Ct. 2004).

<sup>14</sup> 23 Pa. Cons. Stat. § 5313(a).

<sup>15</sup> 23 Pa. Cons. Stat. § 5313(b). The full text of this statute is found in the Appendix to this guide.

duties for the six months prior to the proceedings.<sup>16</sup> For example, if the child's parent has been away involuntarily through illness, incarceration, or military deployment, then the absent parent must still do whatever is possible to stay in touch with the child. Otherwise, their absence might look like abandonment or neglect, which could lead to the loss of parental rights.

A grandparent can help to make sure that does not happen. Custodial grandparents have the ability to support their son or daughter's efforts to maintain contact with the grandchild by facilitating phone calls, letters, and visits. To protect the parental rights of the parent during their absence, grandparents can show that a stable, loving home is being provided until the parent is able to return.

Sometimes a care-giving grandparent first learns from court papers that another individual is seeking to change the existing arrangements. If a live-in grandchild's other parent or grandparents happen to file a complaint or petition to gain custody of the child, they might serve a "notice" to the care-giving grandparent. The notice would tell the grandparent what to do if they wished to object to the proposed action.

**REMEMBER:**

- **With legal custody, a grandparent can help a child to stay in touch with their parent.**
- **Watch out for a notice that the other parent or someone else wants to change the arrangements.**

## **VI. CUSTODY OR VISITATION MAY BE MODIFIED OR CHANGED**

Unlike parental rights, custody is temporary. A custody order will remain legally enforceable until the court issues a new order. The court has the ability to modify or change visitation or custody orders, if a petition to modify the previous order is filed.<sup>17</sup> In future proceedings, family members are able to present reasons for the court to alter the previous order, such as when the circumstances have changed. For example, if the court gives a grandparent legal custody of the grandchildren while their parent is incarcerated or hospitalized, then the court will likely restore custody to the parent when they are released and can demonstrate the ability to provide a stable home again.

The law has further flexible features. A grandparent may seek partial custody or shared custody with one of the grandchild's parents, if appropriate.

A grandparent with shared or partial custody has the power to make important decisions for the grandchildren if the need arises. In this case, the grandparent would consult with the custodial parent when possible. In fact, a commitment to cooperate with both parents is one of the factors that the court will consider in deciding whether to grant a grandparent's request for custody.

**REMEMBER:**

- **A grandparent can share custody of a grandchild with one or both parents.**
- **When the parent is again able to care for the child, the court can give custody back to him or her.**
- **Try to maintain a good working relationship with the other parent.**

<sup>16</sup> See 23 Pa. Cons. Stat. § 2511-12.

<sup>17</sup> See 23 Pa. Cons. Stat. § 5310.

## **VII. BEST INTERESTS OF THE CHILD**

The court will look at the situation with one main principle: the best interest of the child.<sup>18</sup> Therefore, a petition or a complaint filed with the court should state in detail all the reasons the grandparent should have visitation or custody of their grandchild. That means the grandparent should avoid blaming anyone or making judgments about what any adult in the situation might or might not deserve.

Never forget: It's all about the kids. The focus must be on the child's welfare. Because the court presumes that children generally are better off maintaining relationships with both of their parents, grandparents should emphasize their willingness to promote contact with relatives on both sides of the family when possible.

### **REMEMBER:**

- **The court will evaluate every case based on the best interest of the child.**
- **Keep a positive tone.**
- **State a commitment to harmony in the family.**

## **VIII. FACTORS THE COURT WILL WEIGH**

The court will closely examine the particular facts of the situation. The court will consider any factor that affects the physical, emotional, intellectual, moral, or spiritual well-being of the grandchild. For example, courts have found that it is generally in a child's best interest to maintain relationships with brothers, sisters, and other members of the family, as long as those relationships are not unduly stressful for the child.

The preference of the child may be considered, too. Though it is not conclusive, the grandchild's wishes will be taken into consideration as appropriate, given their level of maturity and understanding. If the child is old enough to express an opinion convincingly, the court will likely listen.

Be aware that the court does not give much weight to any assertion that the grandparent might have more money and could give the child material or cultural advantages. Keep in mind as well that a custody or visitation request is not the place for a grandparent to assign blame or criticism to anyone. Instead, grandparents should explain how they plan to facilitate peaceful contacts with every person who rightfully should have a role in their grandchildren's lives.

The court has discretion to look at all the details of a family's situation when it decides on the custody and visitation arrangements for a child. By law, the court must put major emphasis on the best interest of the child. That means that the interests and wishes of the adults come in second behind that primary concern. Following is a list of factors that courts have considered when deciding whether to grant requests for custody and requests for visitation rights. This list shows the sort of details that grandparents should mention in a custody complaint or petition.<sup>19</sup>

- The quality of the relationship between the child and each parent, grandparent, or person seeking custody;

<sup>18</sup> See 23 Pa. Cons. Stat. § 5311, 5312, 5313.

<sup>19</sup> The list is adapted from 2 PENNSYLVANIA LEGAL SERVICES PRACTICE MANUAL V.C.1.

- The present relationship of the parents or grandparents with their own families, and the child's relationship with those relatives;
- The educational and employment backgrounds of the grandparents and parents;
- The parents' history as a couple and the reasons why they separated;
- The role each parent and grandparent played in raising the child while the parents lived together and the role each plays now that they are separated;
- The mental, emotional, and physical health of each parent and grandparent and any treatment rendered to them by professional health care providers;
- The religious training and practices of each parent and grandparent, and their views of the same with respect to the child;
- Each parent and grandparent's personal relationships with other significant adults, the stability of those relationships, and how those persons relate to the child;
- The stability and quality of the existing or proposed living arrangements, neighborhood, and schooling;
- The child's school performance history;
- The child's relationships with other siblings or step-siblings;
- The child's extracurricular activities;
- The child's present friendships or the potential for developing friendships in a new environment;
- The child's present physical, emotional, and mental health and any treatment rendered to the child;
- The expressed preference of the age-appropriate child.

**REMEMBER:**

- **Details help. Be ready to describe the grandchild's school life, friendships, sports activities, and other interests while in the grandparent's care.**
- **The child's preference will be considered if they are old enough to explain.**

## **IX. PARENTAL RIGHTS**

It is important to understand that having visitation or legal custody of a grandchild does not take parental rights away from the child's parents. Two entirely different legal concepts are at work here. Only a court can take away parental rights, and only for very serious reasons. **Parental rights** may include entitlement to control the child's upbringing, to discipline the child, and to take charge of the child's earnings, while **parental duties** may include providing support, control,

subsistence, and love.<sup>20</sup> Parents continue to have rights and duties even after a grandparent is awarded legal custody of a grandchild.

This manual is for acquiring legal custody, not parental rights. Legal custody does not displace the parents or cut off their parental rights.<sup>21</sup>

**REMEMBER:**

- **Asking for custody does not terminate parental rights.**
- **If a grandparent gets legal custody, the parent(s) may still have parental rights and duties.**

## **X. HOW TO MAKE A CUSTODY REQUEST**

A care-giving grandparent can use one of two methods to ask the court for legal custody of her or his grandchild. The method a grandparent should use will depend on the circumstances. If there is already an existing custody order in effect, then the grandparent should file a **petition** to the court to change that order. This could be the case if the parents of the children divorced and a custody order was issued at the same time as their divorce decree.

On the other hand, if there is no custody order in place yet, then a grandparent should file a **complaint** to request custody. In effect, this is a lawsuit for custody. Both methods are explained further below. Use either method, as appropriate, to request either full or partial legal custody of the grandchild.

**REMEMBER:**

- **File a complaint for custody if no custody order has yet been issued.**
- **File a petition to change an existing order.**
- **Which form to file depends on whether or not there is a previous custody order in effect.**

## **XI. FILING THE REQUEST**

A custody complaint or petition should be filed in the Court of Common Pleas of the county where the child resides.<sup>22</sup> Child support can be requested from the responsible parent at the same. Each county decides whether to use a formal or an informal intake process leading up to a hearing or a trial of the request. Often, custody arrangements can be worked out with the assistance of a

<sup>20</sup> The list of parental rights and duties is partly set by custom and partly developed in decisions of the courts over the years. *See* 15 SUMM. PA. JUR. 2d Family Law §8:33.

<sup>21</sup> In contrast, adoption does cut off the parental rights.

<sup>22</sup> Pa. R.C.P. 1915.2 gives options for choosing the county in which to file in the Court of Common Pleas. Ordinarily that is the home county of the child at the time of filing. If the child lived in a different county during the prior six months and one of the parents still lives there, then it is permitted to file in that county. Under some conditions, filing may be done in a county where the family has significant connections. If in doubt, a grandparent should contact the Court Administrator in their home county. Addresses and phone numbers of the courts are listed in the Appendix. Once the complaint or petition has been filed, the court may decide to transfer the action to another court, depending on the circumstances. *See* Pa. R.C.P. 1915.2 (a)-(c).

court hearing officer or mediator, without having to go to trial. Grandparents should consult the Court Administrator in their county to find out what forms the local court requires. The basic forms are provided in the Appendix to this manual.

Some counties require attendance at a mandatory seminar on custody. Grandparents will be asked to pay a fee to file the complaint or petition. There may be another fee for the custody training session, if one is required. If the fees pose a financial burden, ask the Court Administrator how to request to have them waived.

When filing a custody complaint or petition with the court, a grandparent must also serve copies to the parents of the grandchild if they currently have legal custody, and to anyone else who might have a custody claim. The person who files the complaint is the “**plaintiff**” (in this case, the grandparent), which means they are asking the court to do something: i.e., award legal custody of the grandchild. The people who are being sued are the “**defendants**” (in this case, the parents or other custodians), which means that they might oppose the action.

On the other hand, with a petition, the person who files the petition is designated the “**petitioner**.” The other party is the “**respondent**” to the proposal to change an existing custody order.

Giving a copy of the complaint or petition to the other interested parties is called “**service**.” After they are served, the parents and other interested parties may decide to oppose the grandparent’s action. If they do so, they should serve the grandparent with a copy of their response, informing the grandparent and the court of the reasons why they object to the request.

The same forms can be used when filing for visitation or custody. The same criteria apply. Grandparents are entitled to visitation rights for the same reasons and on the same basis as custody rights.

**REMEMBER:**

- **Check with the local Court Administrator for any special requirements.**
  - **Fees can be waived if you cannot afford them.**
- Use the same forms when filing for visitation rights or custody.**

## **XII. THE TRIP TO COURT**

After the grandparent files the papers, the court will call her or him in for an initial conference or hearing of some kind. Each county has a different procedure, so check with the local Court Administrator for details. Procedures may be different, depending on whether the grandparent is seeking visitation, partial legal custody, or full legal custody. The procedure may also vary depending on whether she or he is seeking to modify an existing custody order or to get an initial custody order.

The Pennsylvania Rules of Court govern the legal processes that grandparents may use to seek legal custody of their grandchildren. The relevant provisions are in Rules 1915.1 through 1915.18. The original versions of the forms have been adapted for this manual.

The Rules provide two alternative ways for the court to handle the initial stages of a grandparent’s request. Most counties schedule an informal office conference, according to Rule 1915.4-3. Trial follows only if details cannot be worked out in conference.

Some counties will call the grandparent in for a more formal conference with an officer appointed by the court, to be followed by a hearing, before the matter goes to trial if necessary. The counties that follow this more formal procedure, which is described in Rule 1915.4-2, are the following: Allegheny, Bradford, Cambria, Carbon, Delaware, Fayette, Forest, Greene, Lackawanna, Lehigh, Luzerne, Philadelphia, Pike, Schuylkill, Tioga, Warren, and Wayne.

An additional complication that may be encountered is that some counties may require the grandparent to sign up for a workshop or information session at the same time that the custody request is filed. It is always best to check with the county's Court Administrator to make sure that all the required steps of the process have been fulfilled.

**REMEMBER:**

- **Check with the local Court Administrator to learn what process your local county uses for visitation and custody cases.**

### **XIII. HOW TO PREPARE FOR COURT**

When called to attend a hearing or conference, prepare in advance by reading over the papers that have been filed with the court. Especially in custody cases, take along records such as rent receipts, receipts for utility bills, pay stubs, and receipts for food, clothing, transportation, medical and dental care, and anything else provided for the grandchild. The court will be interested to see the grandchild's report cards and any other records that can help to show how the child has been getting along in the grandparent's home.

The grandparent should document the fact that they are providing for all the child's needs: physical, emotional, moral, social, intellectual, and spiritual. The court will be focused on the best interests of the grandchild. Go to the hearing or conference equipped with any and all information that will help the court to arrive at an accurate picture of the situation.

The grandchild need not appear at the conference. It is best to leave young children at home. If the child attends, there may be contact with the opposing parties. The child will experience whatever interactions the grandparent has with the hearing officer or judge and with the other parties. Check with the Court Administrator to see whether local rules apply.

**REMEMBER:**

- **After filing, the court calls the grandparent in for a conference.**
- **Prepare for the conference by gathering records of the care regularly provided for the grandchild.**
- **Weigh carefully the pros and cons of taking the grandchild along to the hearing.**

# **APPENDICES**

# APPENDIX A

## Glossary

**Adoption** - The creation of a parent–child relationship by judicial order between two parties who usually are unrelated. Parental rights and duties are reassigned. Adoption terminates existing parental rights, as well as the standing of grandparents to seek custody.

**Custody** - The legal right to keep, control, guard, care for and preserve a child and includes the terms “legal custody,” “physical custody,” and “shared custody.”

**Complaint for Custody** - An action at law to obtain full or partial custody of a child when the child is not covered by any existing custody order.

**Defendant** - The person or party who is being sued in a lawsuit.

**Grandparent** - A parent’s parent. Pennsylvania law does not recognize step-grandparents. However, adoptive parents have the same status as natural parents. Great-grandparents, that is, grandparents of parents, have the same standing as grandparents.

**Legal custody** - The legal right to make major decisions affecting the best interest of a minor child, including, but not limited to, medical, religious, and educational decisions.

**Partial custody** - The right to take possession of a child away from the custodial parent for a certain period of time.

**Petition for custody or partial custody** - A request for the court to modify the terms and conditions of an existing custody order.

**Petitioner** - The person or party who brings a petition before the court.

**Physical custody** - The actual physical possession and control of a child.

**Plaintiff** - The person or party bringing a lawsuit.

**Respondent** - The person or party who is being sued in a petition.

**Shared custody** - An order awarding shared legal or shared physical custody, or both, of a child in such a way as to assure the child frequent and continuing contact with both parents.

**Visitation** - The right to visit a child. The term does not include the right to remove a child from the custodial parent’s control.

# APPENDIX B

## Forms to File

- 1. Use a Complaint or Petition**  
Grandparents who wish to seek partial or full legal custody of their grandchildren may use the following forms to present their request to the court. Use the “complaint” if there has not yet been a custody order with regard to the child. Use the “petition” if there is an existing custody order, and be sure to attach a copy of the existing order to the petition.
- 2. Use the Same Forms For Visitation or Custody**  
A grandparent seeking only visitation may use the same forms.
- 3. The Complaint or Petition Must Be Signed**  
Note that both forms must be “verified.” That means that the grandparent must place her or his signature under the affirmation at the end as her or his guarantee that the information entered is accurate. The forms have alternative terms in parentheses in many places. Cross out any word that does not describe the situation. You do not need the complaint or petition to be notarized.
- 4. Attach a Proposed Order**  
In many counties, the court will require the grandparent to attach a proposed “order” to the complaint or the petition. The judge uses this blank form to record the decision.
- 5. Great-Grandparents are the Same as Grandparents Under the Law**  
Great-grandparents have the same standing as grandparents under Pennsylvania law to request custody or visitation. A care-giving great-grandparent may simply make the appropriate changes in the form as they fill it out.
- 6. Sample Forms are Included Here**  
The three forms that follow have been adapted from the Pennsylvania Rules of Court, Rule 1915.15. The adaptations have been made with grandparents in mind.

These forms may be used for one plaintiff and one defendant and one child. Where there are multiple parties, the complaint should be appropriately changed to add them. Where the custody of more than one child is sought, the complaint should contain a separate paragraph for each child.



During the past five years, the child has resided with the following persons and at the following addresses:

(List All Persons)	(List All Addresses)	(Dates)
_____	_____	_____
_____	_____	_____
_____	_____	_____

The mother of the child is \_\_\_\_\_, currently residing at \_\_\_\_\_.

She is (married)(divorced)(single).

The father of the child is \_\_\_\_\_, currently residing at \_\_\_\_\_.

He is (married)(divorced)(single).

4. The relationship of plaintiff to the child is that of grandparent.

The plaintiff currently resides with the following persons:

Name	Relationship
_____	_____
_____	_____

5. The relationship of defendant to the child is that of \_\_\_\_\_.

The defendant currently resides with the following persons:

Name	Relationship
_____	_____
_____	_____

6. Plaintiff (has) (has not) participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another court. The court, term and number, and its relationship to this action is:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Plaintiff (has) (has no) information of a custody proceeding concerning the child pending in a court of this Commonwealth or any other state. The court, term and number, and its relationship to this action is: \_\_\_\_\_

Plaintiff (knows) (does not know) of a person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child. The name and address of such person is: \_\_\_\_\_

7. The best interest and permanent welfare of the child will be served by granting the relief requested because (set forth facts showing that the granting of the relief requested will be in the best interest and permanent welfare of the child; if several children are involved and their circumstances are different, use separate paragraphs for each):

The plaintiff grandparent has shown genuine care and concern for the child/ren in the following ways:

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The relationship of the plaintiff grandparent with the child/ren (began with the consent of a parent) (began pursuant to an order of the court) in the following circumstances:

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The grounds for this (custody) (visitation) request are (check one or all that apply):

- (The plaintiff grandparent has for 12 months assumed the role and responsibilities of the child's /children's parent, providing for the physical, emotional, and social needs of the child.)
  
- (The plaintiff grandparent is assuming the responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 [relating to juvenile matters].)
  
- (The plaintiff grandparent assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness.)

The following are further reasons for this custody request:

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8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child have been named as parties to this action. All other persons, named below, who are known to have or claim a right to custody or visitation of the child will be given notice of the pendency of this action and the right to intervene:

Name	Address	Basis of Claim
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

WHEREFORE, plaintiff requests the court to grant (custody)(partial custody) of the child.

\_\_\_\_\_  
Plaintiff

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\_\_\_\_\_  
Plaintiff





\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone)

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of \_\_\_\_\_ County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT:

Date:

\_\_\_\_\_

\_\_\_\_\_  
J.

# APPENDIX C

## Excerpts of Statutes

This manual has the text of the relevant statutes (laws) and some brief explanations of them. This is background information. The court does not expect grandparents to know all of the technical legal details, and someone can certainly file a custody complaint or petition without reading any further. But for those who are interested, the information below indicates the sources of the recommendations in this manual.

### 1. Statutes (Laws) That Relate To Grandparent Visitation And Custody

Title 23 of the Pennsylvania Consolidated Statutes, Sections 5311-5313, give grandparents the “standing” needed in order to go into court and present their request for custody.

Section 5311 gives a grandparent standing to request visitation or custody of their grandchild after his or her parent dies, when the dead parent was the son or daughter of the grandparent filing, even if the grandchild’s other parent is still living.

#### **23 Pa. C.S. § 5311. When parent deceased**

If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent may be granted reasonable partial custody or visitation rights, or both, to the unmarried child by the court upon a finding that partial custody or visitation rights, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.

Section 5312 allows a grandparent to request visitation or partial legal custody of a child whose parents have been separated for at least six months. This law was clarified and authoritatively interpreted in a recent case, *Malone v. Stonerook*, 843 A.2d 1278 (Pa. Super. 2004). The court held that a grandparent had standing to request custody even though her son was not married to the baby’s mother. In other words, the grandparent may file for custody six months after the grandchild’s parents have separated, whether or not they were married.

#### **23 Pa. C.S. § 5312. When parents' marriage is dissolved or parents are separated**

In all proceedings for dissolution, subsequent to the commencement of the proceeding and continuing thereafter or

when parents have been separated for six months or more, the court may, upon application of the parent or grandparent of a party, grant reasonable partial custody or visitation rights, or both, to the unmarried child if it finds that visitation rights or partial custody, or both, would be in the best interest of the child and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact between the parents or grandparents of the party and the child prior to the application.

Section 5313, gives grandparents the standing in other situations. A grandparent may file a request with the court if she or he meets the requirements for Subsection (a) or Subsection (b). This is reflected in the form for making a Complaint for Custody or Partial Custody.

### **23 Pa. C.S. § 5313. When grandparents may petition**

(a) Partial custody and visitation.--If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents, the grandparents or great-grandparents may petition the court for an order granting them reasonable partial custody or visitation rights, or both, to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

(b) Physical and legal custody.--A grandparent has standing to bring a petition for physical and legal custody of a grandchild. If it is in the best interest of the child not to be in the custody of either parent and if it is in the best interest of the child to be in the custody of the grandparent, the court may award physical and legal custody to the grandparent. This subsection applies to a grandparent:

(1) who has genuine care and concern for the child;

(2) whose relationship with the child began with the consent of a parent of the child or pursuant to an order of court; and

(3) who for 12 months has assumed the role and responsibilities of the child's parent, providing for the physical, emotional and social needs of the child, or who assumes the responsibility for a child who has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters) or who assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. The court may issue a temporary order pursuant to this section.

## 2. Standards That A Court Uses To Evaluate A Visitation Or Custody Request

Section 5303 is the core of Pennsylvania's child custody statute. The overriding concern of the court is to ensure the well-being of the child. For this reason, the court inquires into past criminal history if it could indicate any possible risk of future danger to the child. However, custody is possible for parents who have felony convictions. Subsection (c) of the statute makes provisions for counseling in order to balance the interests of parent and child in that situation.

### **23 Pa. C.S. § 5303. Award of custody, partial custody or visitation**

(a) General rule.--

(1) In making an order for custody or partial custody, the court shall consider the preference of the child as well as any other factor which legitimately impacts the child's physical, intellectual and emotional well-being.

(2) In making an order for custody, partial custody or visitation to either parent, the court shall consider, among other factors, which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between the noncustodial parent and the child.

(3) The court shall consider each parent and adult household member's present and past violent or abusive conduct which may include, but is not limited to, abusive conduct as defined under the act of October 7, 1976 (P.L. 1090, No. 218), known as the Protection From Abuse Act.

(b) Consideration of criminal conviction.--If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- (4) 18 Pa.C.S. § 3121 (relating to rape);
- (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault);
- (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
- (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);
- (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
- (9) 18 Pa.C.S. § 3126 (relating to indecent assault);
- (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);

- (11) 18 Pa.C.S. § 4302 (relating to incest);
- (12) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);
- (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or
- (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(b.1) Consideration of criminal charge.--

(1) A parent who has obtained information under 42 Pa.C.S. § 1904 (relating to availability of criminal charge information in child custody proceedings) of the charge filed against the other parent for an offense listed in paragraph (2) may move for a temporary custody order or to modify an existing custody, partial custody or visitation order. The temporary custody or modification hearing shall be scheduled expeditiously.

(2) In evaluating any request for temporary custody or modification of a custody, partial custody or visitation order, the court shall consider whether the parent who is or has been charged with an offense listed below poses a risk of harm to the child:

- (i) 18 Pa.C.S. Ch. 25;
- (ii) 18 Pa.C.S. § 2702 (relating to aggravated assault);
- (iii) 18 Pa.C.S. § 2706 (relating to terroristic threats);
- (iv) 18 Pa.C.S. § 2709.1 (relating to stalking);
- (v) 18 Pa.C.S. § 2901;
- (vi) 18 Pa.C.S. § 2902;
- (vii) 18 Pa.C.S. § 2903 (relating to false imprisonment);
- (viii) 18 Pa.C.S. § 3121;
- (ix) 18 Pa.C.S. § 3122.1;
- (x) 18 Pa.C.S. § 3123;
- (xi) 18 Pa.C.S. § 3124.1;
- (xii) 18 Pa.C.S. § 3125;
- (xiii) 18 Pa.C.S. § 3126;
- (xiv) 18 Pa.C.S. § 3127;
- (xv) 18 Pa.C.S. § 3301 (relating to arson and related offenses);
- (xvi) 18 Pa.C.S. § 4302;
- (xvii) 18 Pa.C.S. § 4304;
- (xviii) 18 Pa.C.S. § 6312; and
- (xix) 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).

(3) Failure to apply for information under 42 Pa.C.S. § 1904 or to act under this subsection shall not prejudice any parent in a custody or visitation proceeding.

(b.2) Parent convicted of murder.--No court shall award custody, partial custody or visitation to a parent who has been convicted of murder under 18 Pa.C.S. § 2502(a) (relating to murder of the first degree) of the other parent of the child who is the subject of the order, unless the child is of suitable age and consents to the order.

(c) Counseling.--In making a determination to award custody, partial custody or visitation pursuant to subsection (b), the court shall appoint a qualified professional to provide counseling to an offending parent described in subsection (b) and shall take testimony from that professional regarding the provision of such counseling prior to issuing any order of custody, partial custody or visitation. Counseling, required in accordance with this subsection, shall include a program of treatment or individual therapy designed to rehabilitate a parent which addresses, but is not limited to, issues regarding physical and sexual abuse, domestic violence, the psychology of the offender and the effects of abuse on the victim. If the court awards custody, partial custody or visitation to an offending parent described in subsection (b), the court may require subsequent periodic counseling and reports on the rehabilitation of the offending parent and the well-being of the child following an order relating to custody, partial custody or visitation. If, upon review of a subsequent report or reports, the court determines that the offending parent poses a threat of harm to the child, the court may schedule a hearing and modify the order of custody or visitation to protect the well-being of the child.

(d) Sole custody.--The court shall award sole custody when it is in the best interest of the child.

# APPENDIX D

## Addresses of the Courts

Custody complaints and petitions are filed with the Clerk of the Court in the Court of Common Pleas. Before filing, contact the Court Administrator to find out about any particular local requirements.

Ordinarily the Clerk and the Administrator are located near each other in the county courthouse. Below is direct contact information for the Court Administrators. This list is current as of July 2010, but locations and phone numbers of the courts can change without notice. Further helpful information is available online at <http://www.aopc.org/T/CommonPleas/>.

District Court Administrator of Adams County  
Adams County Courthouse  
111-117 Baltimore Street  
Gettysburg, PA 17325  
717-337-9846

District Court Administrator of Blair County  
Blair County Courthouse  
423 Allegheny Street, Suite 239  
Hollidaysburg, PA 16648  
814-693-3050

District Court Administrator of Allegheny County  
300 Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
412-350-6939

District Court Administrator of Bradford County  
Bradford County Courthouse  
301 Main Street  
Towanda, PA 18848  
570-265-1707

District Court Administrator of Armstrong County  
Second Floor  
Armstrong County Courthouse  
500 East Market Street  
Kittanning, PA 16201  
724-548-3284

District Court Administrator of Bucks County  
Bucks County Courthouse  
55 East Court Street  
Doylestown, PA 18901  
215-348-6700

District Court Administrator of Beaver County  
Beaver County Courthouse  
810 Third Street  
Beaver, PA 15009  
724-728-5700

District Court Administrator of Butler County  
Butler County Government Center  
P.O. Box 1208  
Butler, PA 16003  
724-284-5200

District Court Administrator of Bedford County  
Bedford County Courthouse  
200 South Juliana Street  
Bedford, PA 15522  
814-624-2634

District Court Administrator of Cambria County  
Cambria County Courthouse  
200 South Center Street  
Ebensburg, PA 15931  
814-472-1552

District Court Administrator of Berks County  
Berks County Courthouse  
633 Court Street, Seventh Floor  
Reading, PA 19601  
610-478-6208

District Court Administrator of Carbon County  
Carbon County Courthouse  
4 Broadway  
P.O. Box 131  
Jim Thorpe, PA 18229  
570-325-8556

District Court Administrator of Centre County  
Centre County Courthouse, Room 208  
Bellefonte, PA 16823  
814-355-6727

District Court Administrator of Chester County  
Chester County Justice Center  
201 West Market Street, Suite 4100  
P.O. Box 2746  
West Chester, PA 19380-0989  
610-344-6173

District Court Administrator of Clarion County  
Clarion County Courthouse  
421 Main Street  
Clarion, PA 16214  
814-226-9351

District Court Administrator of Clearfield County  
Clearfield County Courthouse  
230 East Market Street, Suite 228  
Clearfield, PA 16830  
814-765-2641

District Court Administrator of Clinton County  
Clinton County Courthouse  
230 East Water Street  
Lock Haven, PA 17745  
570-893-4016

District Court Administrator of Columbia & Montour  
Counties  
Columbia County Courthouse  
P.O. Box 380  
Bloomsburg, PA 17815  
570-389-5667

District Court Administrator of Crawford County  
Crawford County Courthouse  
903 Diamond Park  
Meadville, PA 16335  
814-333-7498

District Court Administrator of Cumberland County  
Cumberland County Courthouse  
One Courthouse Square  
Carlisle, PA 17013  
717-240-6203

District Court Administrator of Dauphin County  
Dauphin County Courthouse  
Court Administrators Office  
101 Market Street, Suite 300  
Harrisburg, PA 17101  
717-780-6624

District Court Administrator of Delaware County  
Delaware County Courthouse  
201 West Front Street  
Media, PA 19063  
610-891-4557

District Court Administrator of Elk & Cameron  
Counties  
Elk County Courthouse  
P.O. Box 416  
Ridgway, PA 15853  
814-776-5375

District Court Administrator of Erie County  
Erie County Courthouse  
140 West Sixth Street, Room 210  
Erie, PA 16501  
814-451-6295

District Court Administrator of Fayette County  
Fayette County Courthouse  
61 East Main Street  
Uniontown, PA 15401  
724-430-1230

District Court Administrator of Franklin & Fulton  
Counties  
Franklin County Courthouse  
157 Lincoln Way East  
Chambersburg, PA 17201  
717-261-3848

District Court Administrator of Greene County  
Greene County Courthouse  
10 East High Street  
Waynesburg, PA 15370  
724-852-5237

District Court Administrator of Huntingdon County  
Huntingdon County Courthouse  
223 Penn Street  
Huntingdon, PA 16652  
814-643-5078

District Court Administrator of Indiana County  
Indiana County Courthouse, Fourth Floor  
825 Philadelphia Street  
Indiana, PA 15701  
724-465-3955

District Court Administrator of Jefferson County  
Jefferson County Courthouse  
200 Main Street  
Brookville, PA 15825  
814-849-1631

District Court Administrator of Lackawanna County  
Lackawanna County Courthouse  
200 North Washington Avenue  
Scranton, PA 18503  
570-963-6773

District Court Administrator of Lancaster County  
Lancaster County Courthouse  
50 North Duke Street  
P.O. Box 83480  
Lancaster, PA 17608  
717-299-8041

District Court Administrator of Lawrence County  
Lawrence County Government Center  
430 Court Street  
New Castle, PA 16101  
724-656-1930

District Court Administrator of Lebanon County  
Lebanon County Courthouse  
400 South Eighth Street, Rm. 311  
Lebanon, PA 17042  
717-274-2801

District Court Administrator of Lehigh County  
Lehigh County Courthouse  
455 West Hamilton Street  
Allentown, PA 18101  
610-782-3998

Acting District Court Administrator of Luzerne County  
Luzerne County Courthouse  
200 North River Street  
Wilkes-Barre, PA 18711  
570-825-1595

District Court Administrator of Lycoming County  
Lycoming County Courthouse  
48 West Third Street  
Williamsport, PA 17701  
570-327-2330

District Court Administrator of McKean County  
McKean County Courthouse  
500 West Main Street  
Smethport, PA 16749  
814-887-5571

District Court Administrator of Mercer County  
205 Mercer County Courthouse  
103 North Diamond Street  
Mercer, PA 16137  
724-662-3800

District Court Administrator of Mifflin County  
Mifflin County Courthouse  
20 North Wayne Street  
Lewistown, PA 17044  
717-242-5453

District Court Administrator of Monroe County  
Monroe County Courthouse  
610 Monroe Street  
Stroudsburg, PA 18360  
570-420-3645

District Court Administrator of Montgomery County  
Montgomery County Courthouse  
P.O. Box 311  
Norristown, PA 19404  
610-278-3224

District Court Administrator of Northampton County  
Northampton County Government Center  
669 Washington Street  
Easton, PA 18042  
610-559-6701

District Court Administrator of Northumberland County  
Northumberland County Courthouse  
201 Market Street  
Sunbury, PA 17801  
570-988-4169

District Court Administrator of Perry & Juniata  
Counties  
Perry County Courthouse  
P.O. Box 668  
New Bloomfield, PA 17068  
717-582-5143

District Court Administrator of Philadelphia County  
Court of Common Pleas of Philadelphia County  
336 City Hall  
Philadelphia, PA 19107  
215-686-2547

District Court Administrator of Pike County  
Pike County Courthouse Annex  
410 Broad Street  
Milford, PA 18337  
570-296-3556

District Court Administrator of Potter County  
Potter County Courthouse  
One East Second Street, Room 30  
Coudersport, PA 16915  
814-274-9720

District Court Administrator of Schuylkill County  
Schuylkill County Courthouse  
401 North Second Street  
Pottsville, PA 17901  
570-628-1333

District Court Administrator of Snyder & Union  
Counties  
Snyder County Courthouse  
P.O. Box 217  
Middleburg, PA 17842  
570-837-4344

District Court Administrator of Somerset County  
Somerset County Courthouse  
111 East Union Street, Suite 200  
Somerset, PA 15501  
814-445-1473

District Court Admin. of Susquehanna County  
Susquehanna County Courthouse  
P.O. Box 218  
Montrose, PA 18801  
570-278-4600

District Court Administrator of Tioga County  
Tioga County Courthouse  
118 Main Street  
Wellsboro, PA 16901  
570-724-9380

District Court Administrator of Venango County  
Venango County Courthouse  
1168 Liberty Street  
P.O. Box 831  
Franklin, PA 16323  
814-432-9606

District Court Administrator of Warren & Forest  
Counties  
Warren County Courthouse  
204 Fourth Avenue  
Warren, PA 16365  
814-728-3531

District Court Administrator of Washington County  
Washington County Courthouse  
1 South Main Street, Suite 2004  
Washington, PA 15301  
724-228-6797

District Court Administrator of Wayne County  
Wayne County Courthouse  
925 Court Street  
Honesdale, PA 18431  
570-253-0101

District Court Administrator of Westmoreland County  
Westmoreland County Courthouse  
2 North Main Street  
Greensburg, PA 15601  
724-830-3828

District Court Administrator of Wyoming & Sullivan  
Counties  
Wyoming County Courthouse  
One Courthouse Square  
Tunkhannock, PA 18657  
570-836-3151

District Court Administrator of York County  
York County Judicial Center  
45 North George Street  
York, PA 17401  
717-771-9234

# APPENDIX E: A Map for Decision-Making



