

Grandparents'

W I S C O N S I N L A W S

Rights and Responsibilities

Grandparents and grandchildren share special bonds and relationships.

Most grandparents are able to enjoy the pleasure of their grandchildren's company without the responsibility of raising and caring for the children full time. And for the grandchildren, their relationships with grandparents provide them with teachers, caretakers, role models, a connection with the past, and — above all — a sense of stability and security.

Yet changes in the family may alter relationships grandparents have with their own children. Their adult child may abuse alcohol and other drugs, be incarcerated, or die. They may have problems communicating. Your child may divorce and remarry, allowing a stepparent to adopt your grandchildren.

In such cases, decisions about your relationship with your grandchildren may end up in court.

When the Legislature or the courts make decisions about grandparents' rights, they seek to balance these two values:

- Allowing parents to care for their children in the best way they can
- Doing what is in the best interest of the children

The wishes or best interest of grandparents are not among the most important factors considered in making these decisions.

How can you protect your relationship with your grandchildren? Grandparents often have questions about their rights and responsibilities.

Questions grandparents ask

The following are some of the most commonly asked questions about grandparents' rights. The answers are based on Wisconsin laws as of the date of this publication. These answers do not substitute for legal advice, nor do they cover all issues. Direct your specific concerns to a family law attorney.

Wisconsin Statutes provide for **legal visitation rights for grandparents** in these circumstances:

- Divorce
- Stepparent adoption
- Death of the grandchild's parent
- The grandchild was born out of wedlock and paternity has been established.

“My grandchildren’s parents are angry with me and refuse to allow me to visit. Can I force them to let me visit my grandchildren?”

Wisconsin does not have a statute enforcing the visitation rights of grandparents over the objections of parents in an intact marriage. Two Wisconsin court of appeals cases, one published and one unpublished, were decided against grandparents even being able to ask — **petition** — for visitation rights with their grandchildren if the marriage is intact. In Wisconsin, parents' wants and wishes prevail by law over grandparents' wishes.



“My child has died, and the surviving parent won’t let me visit my grandchildren. Am I entitled to visit my grandchildren?”

If the grandchildren are in the custody of the surviving parent: With the assistance of your family/domestic attorney, you may petition the county court where your grandchildren live to give you the right to reasonable visitation with your grandchildren.

Visitation will be granted if the court determines it is in the “best interest and welfare of the child.” The Wisconsin Children’s Code **does not** describe or define by law what is in the “best interest and welfare of the child” in relation to grandparent rights.

A few other states have described in their children’s code or state statutes relating to grandparent rights what is in the best interest of the child. For example, *Florida Statutes* relating to grandparent rights state:

- “...in determining the best interest of the minor child, the court shall consider:
- willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents;
 - the length and quality of the prior relationship between the child and the grandparent or grandparents;

- the preference of the child if the child is determined to be of sufficient maturity to express a preference;
- the mental and physical health of the child;
- the mental and physical health of the grandparent or grandparents; and
- such other factors as are necessary in the particular circumstances.”

“My granddaughter lived with me for two years without her parents present in the household. Now, she has been adopted by a stepparent. May I petition the court for visitation rights?”

Section 48.92(2) of the Wisconsin Children’s Code states:

“After the order of adoption is entered the relationship of parent and child between the adopted person and the adopted person’s birth parents, unless the birth parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.”

Therefore, because your grandchild was adopted by a stepparent, you as a grandparent must petition the court for access to your grandchild.

“My grandchild has been adopted by a foster family. Do I have the right to petition for visitation?”

Under *Wisconsin Statutes*, grandparents do not have the right to ask for visitation if the grandchild is adopted by a non-relative. Before an adoption can occur, there must be:

- termination of parental rights, or
- death of one or both parents.

In the case of non-relative foster parents, both parents must have their parental rights terminated. Under such circumstances, not only do the parents lose rights of access to the child(ren), but so do all members of the parents’ extended family.

However, with the continual evolution of laws regarding grandparent visitation, under some circumstances a grandparent may pursue access to their grandchild(ren) after a non-relative adoption.

If you think you fall under this category and wish to pursue the question, contact your family/domestic attorney to determine whether to petition the court for visitation.



“My grandchildren’s parents are divorcing. Do I have a right to visit my grandchildren?”

With the assistance of your family / domestic attorney, you may petition the local county court where your grandchildren live to give you the right to reasonable visitation with your grandchildren.

Petition the court for visitation rights as soon as your son or daughter and spouse begin divorce proceedings, regardless of your present relationship with them. In other circumstances such as stepparent adoption, death of your child, or out-of-wedlock grandchildren, grandparents may ask the court for visitation rights at any time without restriction.

The court presumes that grandparent visitation is in the best interest of the children. It will consider the amount of personal contact you have had with your grandchildren and their parent(s) prior to your petition. If the court allows visitation, it may place reasonable conditions or restrictions on visits. The court may also issue orders necessary to enforce your rights.

“My child has died, and I believe my grandchildren would be better off living with me than with the surviving parent. Can I get custody?”

Wisconsin courts view parents as the natural guardians of their children. Parents have the primary right to legal custody. This right can only be taken away in a legal proceeding where it is shown that:

- the parent’s ability to provide care is so inadequate that the children’s welfare, health and safety are compromised, or
- some other extraordinary circumstances exist.

Custody is then granted by court order to the county social services department. The child is then placed temporarily in another home — which may be the grandparents’ — by the county social services department. If this happens, the grandparents would have physical placement (not custody) of the child, and may then work with a family / domestic attorney to secure custody.

“If my grandchildren’s parents are abusing or neglecting them, what action can I take?”

Each Wisconsin county provides a Child Protection telephone helpline through the county or tribal social services or human services department. The social worker answering this line weekdays will help you determine if the parents’ care falls under the *Wisconsin Statutes* definition of abuse and neglect. The social worker will also tell you how to report abuse and neglect, and what steps the social services department will take once you make the report.

“What are my options if I decide to legally assume care or responsibility for my grandchildren?”

You may care for your grandchildren using your own resources and income. Or you may legally apply to the county or tribal social services department for kinship care or assistance programs for your grandchildren.

“I have been supporting my grandchildren since their parents divorced. Neither parent is contributing money. Can I get help?”

It is the **parents’ responsibility** to furnish financial support for their children. You may go to court to try to make the parents pay back the support you have been providing for their children. To recover the money, however, it must be clear that you did not intend your financial support to be a gift.

The parents’ responsibility to support their children remains intact even when they are divorced. Divorce decrees set an amount for child support according to a child support schedule. This amount is the extent of the financial duty the parent(s) owe, and the court will not allow recovery of any amount more than that.

For other sources of support, call the county or tribal social services or human services department. Ask to speak to an intake worker to discuss your grandchildren’s eligibility for assistance programs, such as Food Stamps and Medical Assistance.

“My child’s parental rights have been terminated by court order, and my grandchildren have been adopted by a stepparent. How can I make sure funds designated for my grandchildren’s education will be used for that purpose?”

Depending on the amount involved and how complicated you are willing to make things, several options may be available. The simplest is to **keep the money yourself** and make it available directly to your grandchildren.

Potential care options and eligibility for assistance programs

Care options	By court order	Potential payment	Child eligible for assistance program*	Who usually has legal custody
Physical placement	No	No	Yes	Child welfare agency*
Legal custody	Yes	No	Yes	Child welfare agency*
Kinship care	Yes	Yes	Yes	Child welfare agency*
Foster care	Yes	Yes	Yes	Child welfare agency*
Guardianship	Yes	No	Grandparent income not considered	Grandparent
Adoption	Yes	No	Grandparent income not considered	Grandparent

* In most counties, you will need to contact the social services department.

Or you could use a **formal trust** with someone acting as a **trustee**. A trustee must be designated if your grandchildren are minors. This usually requires the services of a lawyer. A trust is the surest way to get what you want because the trustee is legally obligated to follow your wishes as set out in the trust agreement.

Check with your family / domestic attorney for other ideas that best suit your needs.

Resources

The following list of books, organizations and Web sites can provide resources on grandparents' rights and responsibilities.

Books

Contemporary Grandparenting, Arthur Kornhaber (Thousand Oaks, Calif.: Sage Publications, Inc.), 1996.

Grandparents as Parents: A Survival Guide for Raising a Second Family, Sylvie De Toledo and Deborah Edler-Brown (New York: Guilford Publications, Inc.), 1996.

Raising Our Children's Children, Deborah Doucette-Dudman (Minneapolis: Fairview Press), 1996.

To Grandma's House We... Stay: When You Have to Stop Spoiling Your Grandchildren and Start Raising Them, Sally Houtman (Northridge, Calif.: Studio 4 Productions), 1999.

Organizations

AARP Grandparent Information

Center — Provides a needed link between grandparents and the resources that can help them care for their grandchildren. The center is a national clearinghouse for information about programs, support groups, research activities and resources for grandparent-headed families. A number of publications, a quarterly newsletter, and referrals to national and local resources are available from the center. *Contact:*

AARP Grandparent Information Center
601 E Street, NW
Washington, DC 20049
(202) 434-2296 —
9 am to 5 pm EST, weekdays
(202) 434-2281 — Spanish
<http://www.aarp.org/getans/grandparents.html>

Grandparents Raising Grandchildren

Partnership of Wisconsin — A statewide network of individuals, agencies, organizations and professionals who provide services to or for grandparents raising their grandchildren and/or children and their families. *Contact:*

Mary Brintnall-Peterson, Ph.D.
Program Specialist in Aging
428 Lowell Hall
610 Langdon St.
Madison, WI 53703
(608) 262-8083
mary.brintnall-peterson@ces.uwex.edu
<http://www.uwex.edu/ces/flp/grgp>

Grandparents Rights of Wisconsin, Inc. (GROW) — A not-for-profit advocacy group dedicated to preserving and protecting the bond between grandparents and grandchildren. Monthly newsletter available. A resource on laws that affect grandparent visitation.

Contact:

Grandparents Rights of Wisconsin, Inc.
P.O. Box 341015
Milwaukee, WI 53234
(414) 535-1218

Grandparents United for Children's Rights, Inc. (GUCR)

— Provides current information on subjects relevant to grandparents throughout the country. GUCR is a national not-for-profit membership agency providing support services, information referral, networking capabilities, and state-of-the-art legislative information, with chapters and subchapters in about 30 states. *Contact:*

Grandparents United for Children's Rights, Inc.
Ethel Dunn
Executive Director
137 Larkin Street
Madison, WI 53705-5115
(608) 238-8751 or
(608) 236-9480 —
9 am to 5 pm CST, weekdays
address.sedun@inxpress.net
<http://www.geocities.com/Heartland/Prairie/6866>

National Coalition of Grandparents

— National coalition of grandparent caregivers working for legislation and other policy changes in support of relative caregivers. *Contact:*

National Coalition of Grandparents
137 Larkin Street
Madison, WI 53705
(608) 238-8751

Wisconsin Telecommunications Relay System (WTRS)

— Allows a text telephone (TTY) user who may be deaf, hard of hearing or speech impaired to call the phone numbers listed above, or anyone else you wish to reach with one end of the call in Wisconsin. Calls may be placed 24 hours a day, 7 days a week. All calls are confidential. To use WTRS, call:
(800) 947-3529
(800-WI-RELAY)

Web sites

If you don't have a computer, contact your local library. Most libraries have a computer linked to the World Wide Web.

Administration on Aging

Provides information to assist grandparent caregivers and those who work with them.

<http://www.aoa.dhhs.gov/factsheets/grandparents.html>

Grandparents as Parents: A Primer for Schools

— Provides links to information on the demographics of grandparents as parents, how schools can help, school strategies intended to help grandparents and grandchildren, life as a parent, how grandparents can be involved in a child's education.

<http://www.kidsource.com/kidsource/content2/grandparents.3.html>

GrandsPlace for Grandparents and Special Others Raising Children

— This Web site lists support groups and grandparent rights groups (formerly GrandsRUs). A section to check out is Wisconsin Disability Resources. Scroll down this page:

<http://www.grandsplace.com/gp7/wi.html>

<http://www.grandsplace.com>

Intergenerational Connections

— Interactive Web site containing educational materials and links to other Web sites on a broad range of intergenerational issues. Grandparents raising grandchildren is a specific Web page in Intergenerational Connections with links to programs, resources and support groups. This Web site is part of the Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture. These networks are dedicated to supporting families in meeting life's challenges using practical research-based information.

<http://www.nnfr.org/igen>

legal.online — Provides links to law-related sites. Particularly relevant are "Where To Find Court Opinions on the Web" — a current list of all federal and state courts whose opinions are available on the Internet; and "Where To Find State Laws on the Web" — a guide to locating statutes, bills and legislative materials. These link to Web sites for each state with varying information.

<http://www.legalonline.com>

Bibliography

Florida Statutes, "Grandparent Visitation Rights," Section 752.01.

Wisconsin Statutes, Chapter 48, "Children's Code," Sections 48.40-48.435, Subchapter VIII, "Termination of Parental Rights."

Wisconsin Statutes, Chapter 48, "Children's Code," Sections 48.92 (2) and 48.925.

Wisconsin Statutes, Chapter 767, "Actions Affecting the Family," Section 767.245.

You and the Law in North Dakota: The Rights of Grandparents and Stepgrandparents FS-549, Deb Gebeke (Fargo, N.D.: North Dakota State University Extension Service), April 1994.

This information is not intended to substitute for legal advice, nor does it cover all issues. For your specific needs, check with a family/domestic attorney. Mention of specific resources is not intended to endorse them, nor to exclude others that may be similar. Resources are listed as a convenience to readers, and subject to change.

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