

Finally, the grandparent must have assumed the role of a parent for one year, **or** the child must have already been determined to lack proper parental care **or** the grandparent must believe that there is parental abuse, neglect, substance abuse, or mental illness.

Is a Custody Order permanent?

A custody order is never permanent. A birth parent or caregiver who has rights to a child may file a petition for modification of a custody order. The party seeking the change has to prove that it is in the best interests of the child. Only adoption is permanent. None of the above relating to visitation or custody by the grandparents shall apply if the child has been adopted by a person other than a stepparent or grandparent.

Any visitation rights granted in any of the above cases prior to the adoption of the child will be automatically terminated upon such adoption. 23 Pa. Cons. Stat. § 5314.

Remember

The law often changes. Each case is different. This document is meant to give you general information and not to give you specific legal advice.



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GRANDPARENTS' RIGHTS IN PENNSYLVANIA



Grandparents' rights to visitation in Pennsylvania are governed by the Pennsylvania Custody and Grandparents' Visitation Act, 23 Pa. Cons. Stat. section 5301 *et seq.* (2007). The following is a general summary of the law in Pennsylvania.



What are Partial Custody and Visitation?

An order awarding partial custody of a child allows you certain times to visit with the child without the legal custodian's supervision. It means that you have the right to take possession of the child away from the custodial parent for a specified period of time (for example, weekends, holidays, or vacations).

An order awarding visitation rights allows you to visit with the child but *only under the supervision of the legal custodian*. In other words, you are not entitled to remove the child from the custodial parent's control.

When can I ask the court for Partial Custody or Visitation rights?

A grandparent or great-grandparent can seek partial custody or visitation under these circumstances:

1) When a birth parent is deceased; 2) when the parents are divorced, or have been separated for six months or more even if they never married; or 3) when the child has resided with a grandparent or great-grandparent for twelve months or more and then the child was taken away from the grandparent or great-grandparent by a parent.

What will the court consider in a decision to grant Partial Custody or Visitation?

The court makes its decision based on what is known as "**the best interests of the child.**" The interests of a child include the child's physical, emotional, intellectual, moral and spiritual well-being. Some of the factors the judge may consider include the relationship that has been developed between the child and the grandparent or great-grandparent and the amount of time they have spent together, the preferences of the child and the willingness of the biological parents to cooperate. The judge will always make sure that the custody arrangement does not interfere with the parent-child relationship. In any proceedings brought by grandparents or others under the Act, hostility and animosity between the contestants may be sufficient to preclude grandparents' visitation or partial custody or visitation upon a finding that the relationship will be hurt.

The Courts have consistently stated that it is in the children's best interest to preserve and nurture those relationships which are meaningful while avoiding situations which might prove harmful.

A Court has no power under the Act to order a grandparent or great-grandparent visitation where both parents are alive, reside together with their children, and object to visitation *unless* the child has recently lived with the grandparent or great-grandparent for twelve months or more.

When can I go to court for FULL PHYSICAL and LEGAL CUSTODY of a grandchild?

A grandparent or great-grandparent can file a petition for *full* physical and legal custody only under certain circumstances that are determined by the court. First, it must be in the best interest of the child to be in the grandparent's custody. Second, the court must believe that the grandparent has genuine care and concern for the child.



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