

**GRANDPARENTS RAISING
GRANDCHILDREN
OR
ADULTS RAISING
RELATIVE CHILDREN
IN MONTGOMERY COUNTY**

WHAT YOU NEED TO KNOW ABOUT:

Temporary Custody

Legal Custody

Permanent Custody

Power of Attorney

Caretaker Affidavit

Foster Care

Adoption



**This booklet was compiled by the
Kinship Caregiver Coalition**

November 2004

(Revised December 2011)

GRANDPARENTS (OR RELATIVES) RAISING GRANDCHILDREN

INFORMATION TO HELP YOU UNDERSTAND RIGHTS & BENEFITS ASSOCIATED WITH DIFFERENT TYPES OF CUSTODIAL ARRANGEMENTS ¹

Introduction:

When a grandparent² assumes responsibility for a grandchild, a variety of legal relationships may be created. Each one carries certain privileges, benefits, rights, and responsibilities. On one end of the spectrum, the grandparent may simply have **physical possession** of the child. This is the situation that may be present when no legal arrangements have been made to transfer custody from a biological parent or legal guardian and no agency has officially placed the child with the grandparent. When circumstances require that a child be removed from the home of a parent and Montgomery County Children Services (MCCS) becomes involved, a grandparent may be called upon to provide care for the child. In such situations, the court will typically give custody to the grandparent.

Temporary custody is a status that may be granted by the courts, typically the juvenile courts, to award grandparent custody for up to one year unless terminated earlier or extended by the court for a maximum of two years. **Legal custody** is another arrangement that may be created that provides the grandparent with rights to make most decisions for the child and is a fairly stable arrangement. In other circumstances, **permanent custody** may be granted to Children Services when all other relative resources have been exhausted. **Adoption** is the most complete and permanent of custodial transfers. By adopting, the grandparent, or adoptive “parent,” becomes fully responsible for the child and acquires virtually the same rights and responsibilities as a natural parent.

1. The information in this guide is derived from “Custody Choices for Kinship Care: Temporary vs. Legal vs. Permanent Custody” pamphlet by Montgomery County Children Services; and discussions with representatives of the Department of Job and Family Services, Denise Ginsler of Montgomery County Children Services, revised and updated March 2001. It has been prepared in consultation with the University of Dayton Law Clinic by the members of the KCC Policy Subcommittee.

2. The term “grandparent” here refers to any relative other than the natural parent providing total care for a child.

ABOUT THIS BOOKLET

This booklet may be photocopied and distributed by non-profit agencies. Copies must be distributed at no charge to the caregiver. Please contact the Kinship Caregiver Coalition at (937) 775-8245 and advise us how you are using the booklet and how many copies you make. We want to track how many copies are made and distributed. Photo ready copies can be obtained from the above number. Updates to the telephone numbers can be made for your local use without permission.

All information is as accurate as possible at this date. It is, however, subject to change based on state and federal guidelines.

December 2011

This booklet has been provided by the Kinship Caregiver Coalition, Wright State University, Center for Healthy Communities. It may be downloaded from the Internet at:

<http://www.med.wright.edu/chc/kinship/legalresources.htm>



www.med.wright.edu/chc/kinship



Center for Healthy Communities
A Partnership to Ensure Healthy Lives

www.med.wright.edu/chc

The charts that follow are designed to provide an overview of the different rights and benefits that may be available for each type of custodial arrangement. The information in this guide is intended as a summary of possible benefits that may be available to you under different custodial arrangements. For specific legal advice about which legal status may be best for you, please consult an attorney. **It will be helpful to request an attorney who specializes in child custody, adoption, and/or grandparents' rights.** The following agencies may be able to advise you about your options and/or assist you in locating a suitable attorney:

Legal Aid of Western Ohio (LAWO) (new applicants)	1-888-534-1432
University of Dayton Law Clinic	937-229-3817
Dayton Bar Association Lawyer Referral Service	937-222-6102

Other phone numbers you may find helpful:

Montgomery County Children Services	937-224-KIDS
Montgomery County Department of Job and Family Services	937-496-6720
Kinship Caregiver Coalition	937-775-8245
Dayton Ombudsman's Office	937-223-4613

Conditions of Custody:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● Child is responsibility of MCCA. ● Grandparent may need to request formal foster care certificate to be eligible for benefits. 	<ul style="list-style-type: none"> ● Parent retains legal responsibility. Parent must sign for school enrollment and for medical care. ● As of July 2004, a new Ohio law creates two new ways for grandparents to obtain “care, physical custody, and control” of grandchildren. This DOES NOT change custody. See page 19 for more information. 	<ul style="list-style-type: none"> ● If the Court awards temporary custody to a relative, the custody lasts for one year, unless the Court terminates it earlier. ● At the end of the 24 months of temporary custody, a more permanent plan must occur (i.e., reunification with parent(s), legal custody to a relative or non-relative, or permanent custody to MCCA freeing the child for adoption.

The Kinship Permanency Incentive (KPI) program is designed to promote a permanent commitment by the kinship caregiver by becoming a guardian and custodian over a minor child who would otherwise be unsafe or at risk of harm if the child remained in their own home. The Kinship Permanency Incentive program provides time-limited incentive payments to families caring for their kin. Eligible families will receive an initial payment of \$450 per child and subsequent payments of \$250 at six-month intervals. The maximum incentive amount may not exceed six payments and may not be provided for longer than thirty-six months. Participation in this program does not preclude these families from receiving Child Only TANF benefits; time-limited incentive payments are in addition to TANF benefits.

For more information, please contact your local public children services agency or call 1-866-886-3537 (Option 4).

**POWER OF ATTORNEY
&
CARETAKER AUTHORIZATION AFFIDAVIT**

As of July 20, 2004, a new Ohio law creates two new ways for grandparents to obtain “care, physical custody, and control” of grandchildren. This **DOES NOT** change custody. However, grandparents can enroll children in school and seek medical attention on behalf of the children. There are two different methods:

1. Power of Attorney: If the current legal custodian is in agreement, s/he can complete the Power of Attorney form. This form has to be exercised relative to the best interest of the child and not so that the child can go to a better school or be in a better sports program. That parent needs to complete the packet of materials and notify the non-custodial parent within 5 days. The paperwork is then filed with the Court. At the end of one year, the Montgomery County Court has determined that there will be no extension of the Power of Attorney, but that the matter should be set for a (custody) hearing. The legal custodian can revoke this Power of Attorney at anytime. If the Power of Attorney is revoked a copy of the revocation should be forwarded to the Court and to any school or health care provider who is currently relying on the Power of Attorney. The Power of Attorney does not deal with issues of child support.

2. Caretaker Authorization Affidavit: If for some reason a grandparent can not locate the legal guardian, s/he may sign a notarized affidavit to obtain the “care, physical custody, and control” of a child. This document **DOES NOT** grant custody but allows for the child to be enrolled in school and receive medical treatment. All of the same rules apply as above. The distinction is that this authorization is based on the inability to locate a parent.

Currently, the Kinship Caregiver Coalition is providing direct assistance with preparation of both of these forms. Legal Aid of Western Ohio will provide notary services and possibly legal advice for difficult cases.

Conditions of Custody:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Parent can petition the Court and regain custody at a later date only if in best interests of child and ordered by the court. ● Legal custodian can obtain a private attorney to petition the court for adoption. Legal tie-ups could be lengthy and costly. Parents must be notified of the hearing and given the opportunity to attend. ● Legal custody lasts until the child reaches 18 or graduates from high school, whichever is later. No reviews are scheduled in a typical case. 	<ul style="list-style-type: none"> ● Child is the responsibility of Montgomery County Children Services, who makes placement decisions based on what is in the child’s best interests. 	<ul style="list-style-type: none"> ● Adoptive parent has total custody.

Placement of Child:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● MCCS will perform a house inspection and a background check to determine the safety of living conditions, etc. ● The child can live with the grandparent without the grandparent's being licensed as a foster parent for a limited period of time while waiting for a court date where there is a reasonable amount of certainty that the court will award custody of the child to the grandparents. 	<ul style="list-style-type: none"> ● Parent determines living arrangements. 	<ul style="list-style-type: none"> ● Children Services will remain involved as long as the relative or non-relative maintains temporary custody. ● Child is the responsibility of the temporary custodian.

Childcare and Transportation Allowance:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Grandparent may be eligible for childcare while working, in school or training. ● Grandparent receives OWF just for child; OWF, grandparent's income, including child support, is included in determining eligibility for childcare. SSI, foster care payments, and child support paid out are not included. 	<ul style="list-style-type: none"> ● Grandparent may be eligible for childcare while working, in school or training. ● Grandparent receives OWF just for child; OWF, grandparent's income, including child support, is included in determining eligibility for childcare. SSI, foster care payments, and child support paid out are not included. 	<ul style="list-style-type: none"> ● Adoptive parent must meet same criteria as parent caretaker.

Childcare and Transportation Allowance:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● Child care allowance up to age 12 for the full-time working foster parent (Caseworker determines amount) ● Reimbursement for mileage to doctor's office, counseling and visitation with parents. 	<ul style="list-style-type: none"> ● Grandparent may be eligible for childcare while working, in school or training. ● Grandparent receives OWF just for child; OWF, grandparent's income, including child support, is included in determining eligibility for childcare. SSI, foster care payments, and child support paid out are not included. 	<ul style="list-style-type: none"> ● Grandparent may be eligible for childcare while working, in school or training. ● Grandparent receives OWF just for child; OWF, grandparent's income, including child support, is included in determining eligibility for childcare. SSI, foster care payments, and child support paid out are not included.

Placement of Child:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Child is the responsibility of the legal custodian. 	<ul style="list-style-type: none"> ● Child is placed in the most appropriate adoptive home. 	<ul style="list-style-type: none"> ● Preference is given to relatives. ● Child is placed in the most appropriate adoptive home. ● Placement is supervised by MCCS for at least 6 months before adoption is finalized. ● Adoption is finalized in Probate Court.

Rights Retained by Natural Parents:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● Parents have a right to a minimum two-hour weekly visit. ● Parents may be contacted around medical, dental, educational and personal grooming issues. There will be times when MCCS will be forced to make an alternative decision when it is in the best interest of the child. ● Parents have the right to identify the religion of the child. 	<ul style="list-style-type: none"> ● Parents retain all natural rights. Living arrangements are at the discretion of the parent. ● HB130 – As of July 1, 2004, the Grandparent Care-giver law creates two new ways for grandparents to obtain “care, physical custody, and control of grandchildren”. This DOES NOT change custody. Legal guardian may revoke at any time. See page 19 for more information. 	<ul style="list-style-type: none"> ● Right to visitation with the child. ● Right to determine child’s religion. ● Right to be informed of child’s medical condition. ● Right to receive notice of any legal proceedings. ● Right to be informed of any placement moves. ● Right to participate in and consent to the case plan. ● Right, privilege and obligation to provide financial support. ● Right to consent to marriage of an underage child.

Food Stamp Eligibility:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Food Stamp Assistance Group is everyone who prepares and eats together. ● Everyone’s income in the group is included, including child’s OWF. ● Grandparent must participate in Work Program Activities as if a parent unless specifically exempted. 	<ul style="list-style-type: none"> ● Food Stamp Assistance Group is everyone who prepares and eats together. ● Everyone’s income in the group is included, including child’s OWF. ● Grandparent must participate in Work Program Activities as if a parent unless specifically exempted. 	<ul style="list-style-type: none"> ● Everyone’s income in the group is included. ● For the purposes of food stamp eligibility, adoption subsidy payments are not counted. ● Adoptive parent must participate in Work Program Activities unless specifically exempted.

Food Stamp Eligibility:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● Food Stamp Assistance Group is everyone who prepares and eats together. ● For the purpose of food stamps, everyone's income in the group is counted. ● Foster care payments are included only if the foster child receives food stamps. ● Grandparent must participate in Work Program Activities as if a parent unless specifically exempted. 	<ul style="list-style-type: none"> ● Food Stamp Assistance Group is everyone who prepares and eats together. ● Everyone's income in the group is included, including child's OWF. ● Grandparent must participate in Work Program Activities as if a parent unless specifically exempted. 	<ul style="list-style-type: none"> ● Food Stamp Assistance Group is everyone who prepares and eats together. ● Everyone's income in the group is included, including child's OWF. ● Grandparent must participate in Work Program Activities as if a parent unless specifically exempted.

Rights Retained by Natural Parents:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Right to visitation with child. ● Right to determine child's religion. ● Right to be informed of child's medical condition. ● Right to receive notice of any legal proceedings. ● Right, privilege and obligation to provide financial support. ● Right to consent to marriage of an underage child. 	<ul style="list-style-type: none"> ● Parent's rights are severed, and child is eligible for adoption. ● Parents almost never can regain custody at a later date. ● The parent(s), through his or her attorney, can appeal the decision. Once all appeal processes are complete and the trial court decision is affirmed, the child is free for adoption. 	<ul style="list-style-type: none"> ● Parent's rights and responsibilities are severed. ● Adoptive parents have rights and responsibilities as a natural parent.

General Benefits Available to Grandparent CareGivers:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● MCCS pays the following benefits to foster parents: <ul style="list-style-type: none"> ➤ \$19.00 per day for each child 0-12 years of age. ➤ \$25.20 per day for each child 13 and up. ➤ Child care allowance up to age 12 for the full time working foster parent. ➤ One time amount for clothing varies by age. ● MCCS will pay for any unpaid medical bills not covered by CHIP. ● 7 days of paid respite per year for another foster parent to care for child. ● Reimbursement for mileage to doctor office, counseling, and visitation with parents. ● For more information call Children Services 937-224-Kids ext. 7416 for a Foster Care Specialist 	<ul style="list-style-type: none"> ● A specified relative or legal guardian may be eligible to receive Ohio Works First (OWF) benefits for the minor who physically resides with that individual. 	<ul style="list-style-type: none"> ● A specified relative may be eligible for OWF. ● Kinship Permanency Incentive – see page 20 for more information. ● Contact your county Department of Jobs and Family Services for additional information.

Ohio Works First Eligibility (Child Only):

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● Assistance for child only. ● Grandparent’s benefits are not included. ● Grandparent is not required to participate in Work Program Activities. ● No time limits. ● OWF standard per month for: one child: \$268 two children: \$368 three children: \$450 four children: \$555 five children: \$650 	<ul style="list-style-type: none"> ● Assistance for child only. ● Grandparent’s benefits are not included. ● Grandparent is not required to participate in Work Program Activities. ● No time limits. ● OWF standard per month for: one child: \$268 two children: \$368 three children: \$450 four children: \$555 five children: \$650 	<ul style="list-style-type: none"> ● Adoptive parents have eligibility for OWF for the child only if the adoptive parent is receiving SSI.

Ohio Works First Eligibility (Child Only):

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> ● Families receiving foster care payment (see page 9) are not eligible for child only OWF. 	<ul style="list-style-type: none"> ● Assistance for child only. ● Grandparent’s benefits are not included. ● Grandparent is not required to participate in Work Program Activities. ● No time limits. ● OWF standard per month for: one child: \$268 two children: \$368 three children: \$450 four children: \$555 five children: \$650 	<ul style="list-style-type: none"> ● Assistance for child only. ● Grandparent’s benefits are not included. ● Grandparent is not required to participate in Work Program Activities. ● No time limits. ● OWF standard per month for: one child: \$268 two children: \$368 three children: \$450 four children: \$555 five children: \$650

General Benefits Available to Grandparent CareGivers:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> ● A specified relative may be eligible for OWF. ● A non-relative may be eligible for OWF if legal guardian. ● KPI – see page 20 for more details. ● Contact your county Department of Jobs and Family Services for additional information. 	<ul style="list-style-type: none"> ● Child may be eligible for medical card and subsidy if child has “special needs.” ● Special needs assistance may include: <ul style="list-style-type: none"> ➤ monthly payment ➤ medical card ➤ may be assistance for adoption costs ➤ other, i.e., tutoring, counseling, respite care. 	<ul style="list-style-type: none"> ● Child may be eligible for medical card and subsidy if child has “special needs.” Special needs are medical needs, physical/mental disability, Caucasian child over age 10, African-American child over age 4, and sibling group of 3 or more. ● Special needs assistance may include: <ul style="list-style-type: none"> ➤ monthly payment ➤ medical card ➤ may be assistance for adoption costs ➤ other, i.e., tutoring, counseling, respite care. ● Application for assistance reviewed on case-by-case basis for subsidy amount. Contact MCCS.

Medical Benefits Available for Child Only:

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> • Child is eligible for Medicaid. 	<ul style="list-style-type: none"> • Child may be eligible for medical benefits. Grandparent's income is not included. 	<ul style="list-style-type: none"> • Child may be eligible for medical benefits. Grandparent's income is not included.

Ohio Works First Eligibility (Grandparent and Grandchild):

Foster Care	Physical Possession	Temporary Custody
<ul style="list-style-type: none"> • All eligibility standards must be met. • Medical benefits come with OWF. • Child must be residing with grandparent. • Must prove relationship between child and grandparent or legal guardian through Probate Court or legal custody. • Grandparent must participate in Work Program Activities as if a parent unless medically exempted. • Time limits apply 	<ul style="list-style-type: none"> • All eligibility standards must be met. • Medical benefits come with OWF. • Child must be residing with grandparent. • Must prove relationship between child and grandparent or legal guardian through Probate Court or legal custody. • Grandparent must participate in Work Program Activities as if a parent unless medically exempted. • Time limits apply 	<ul style="list-style-type: none"> • All eligibility standards must be met. • Medical benefits come with OWF. • Child must be residing with grandparent. • Must prove relationship between child and grandparent or legal guardian through Probate Court or legal custody. • Grandparent must participate in Work Program Activities as if a parent unless medically exempted. • Time limits apply

Medical Benefits Available for Child Only:

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> • Child may be eligible for medical benefits. Grandparent's income is not included. 	<ul style="list-style-type: none"> • Child may be eligible for medical benefits. 	<ul style="list-style-type: none"> • Children receiving State adoption subsidy may be eligible for Medicaid.

Ohio Works First Eligibility (Grandparent and Grandchild):

Legal Custody	Permanent Custody	Adoption
<ul style="list-style-type: none"> • All eligibility standards must be met. • Medical benefits come with OWF. • Child must be residing with grandparent. • Must prove relationship between child and grandparent or legal guardian through Probate Court or legal custody. • Grandparent must participate in Work Program Activities as if a parent unless medically exempted. • Time limits apply 	<ul style="list-style-type: none"> • All eligibility standards must be met. • Medical benefits come with OWF. • Child must be residing with grandparent. • Must prove relationship between child and grandparent or legal guardian through Probate Court or legal custody. • Grandparent must participate in Work Program Activities as if a parent unless medically exempted. • Time limits apply 	<ul style="list-style-type: none"> • Adoptive parents must meet all OWF eligibility criteria as parent caretaker.