



Custody for Kinship Caregivers

By: Baylee Butler

Senior Staff Attorney

Southeastern Ohio Legal Services

About Me

- Southeastern Ohio Legal Services
- Youth Law Project
- Appalachian Children Victim's Assistance and Prevention Program



Agenda

- Defining “Kinship”
- Kinship Placement Through Children Services
- Custody
- Grandparent Power of Attorney
- Caretaker Authorization
- Grandparent Rights
- Guardianship



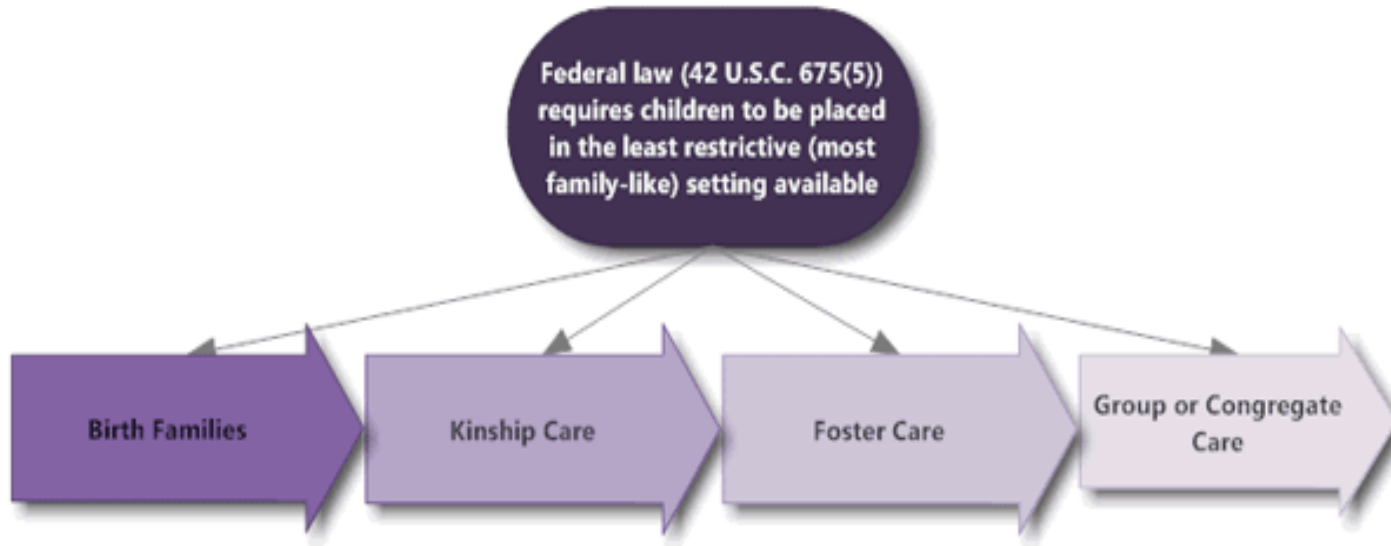


What Does Kinship
Mean to You?

“Kinship”

- Generally refers to the relationship between child and caregiver where the caregiver is not the child’s biological parent
 - Grandparent, Aunt/Uncle, Cousin, Sibling, Next Friend
- Has Different Legal Meanings Depending on the Group:
 - Unofficial Arrangement
 - Children stay with kinship caregiver part of the time, or as needed. Caregiver has no court order or legal rights to the child.
 - Permanent Custody Arrangement
 - Caregiver has custody through a court order.
 - Children Services Placement
 - Caregiver has temporary custody, biological parent(s) working with children services to have the children returned to their care.





Kinship Placement Through Children Services

- When a child is removed from their home by children services due to allegations of Abuse, Neglect, or Dependency, children services has an obligation to identify family members who may be willing to temporarily take responsibility of the child.
- The state agency (children services) has legal custody of the child, the kinship caregiver has physical custody of the child.
- A 2018 Court Order requires Children Services to pay kinship caregivers who have children placed in their home by children services, similar to what they would pay a foster parent if the child were in foster care.



Why is Custody
important?

Custody

CHILD CUSTODY

LEGAL CUSTODY

Legal custody involves responsibility for major life decisions that affect the children's lives, such as their education, religious upbringing, and medical care.

PHYSICAL CUSTODY

Physical custody determines where the children live and what visitation rights may be awarded to the other parent.

- A court order stating who has legal and physical custody of a child
- There is no such thing as “Emergency Custody”
 - “Emergency Custody” is a term often used for an immediate court order stating who should have custody while the longer custody case is pending.
 - “Temporary Custody” is an order the court makes to determine what the custody arrangement looks like while the custody case is ongoing. Unless the court is asked to make an immediate determination, this order could take a couple weeks after filing.
- Temporary Custody does not mean that you only have the kids temporarily. If you ask the court for custody, the court assumes you will have custody forever – the court's goal is to give the child permanent stability.

Custody Continued

- Asking the Court to Grant Custody
 - Must show parent(s) to be unfit
 - Must show that it is in the child's best interest that you be granted custody
- Custody can't just be given back to the parent once custody has been given to someone else
 - There must be a change in circumstances such that it is no longer in the best interest for the child to be in your custody. (Not merely that the parent now wants to step up or is willing to take the child back)
 - Best interest of the child is always the most important thing



Why Seek Custody?



- You have been the sole provider for the child and plan to continue providing for the child until the child is able to provide for him/herself;
- The child wants to remain living with you and the parents constantly threaten to come take the child;
- The child is not safe with either parent or has been abused or neglected while in the parents' care;
- The child is living with you full time and the parents are absent;
- You have custody of the child's sibling(s);

Filing for Custody

- If a court has already issued a custody order regarding the children, you must reopen the case in that court.
- If no court order regarding custody, you may file in the Juvenile Court in the county where the child or the parent lives.
- For paperwork go to www.seols.org/get-help and find the county where you need to file
- You must file:
 - Complaint (or Motion) for Custody
 - Parenting Proceeding Affidavit (UCCJEA)
 - Request for Service (providing a copy to the parents)



Why shouldn't you seek custody?

- You are unable or unwilling to care for the child long-term.
- Parent is truly and actively working on becoming a better caregiver and stable presence in the child's life and the child wants to be with their parent.
- The child is safe with their parent, but the parent needs help or resources to make ends meet.
- You have not had a relationship with the child for a long time



A dark blue, irregularly shaped graphic with a splatter effect, containing white text. The graphic is centered on a white background and has a rough, hand-painted appearance with various shades of blue and white splatters around its edges.

What are the
alternatives to custody?

Grandparent Power of Attorney

- Signed affidavit from the parent, granting a grandparent physical custody of the child.
- Grandparent can use this affidavit to:
 - Enroll the child in school;
 - Discuss child's progress with the school;
 - Consent to school-related matters regarding the child;
 - Consent to medical, psychological, or dental treatment of the child;
- Does not grant legal custody
- The parent retains all rights to the child
- Can only be used if the parent signs it in front of a notary



Caretaker Authorization

- Similar to a Grandparent Power of Attorney, this is a legal understanding that the grandparent has physical custody of the child.
- This is used when the grandparent cannot locate the parent but does not want to file for custody.
 - Must be able to show that you made reasonable efforts to locate the parent
- A court grants the authorization, allowing the grandparent to:
 - Enroll the child in school;
 - Discuss child's progress with the school;
 - Consent to school-related matters regarding the child;
 - Consent to medical, psychological, or dental treatment of the child;



Executing Grandparent Power of Attorney or Caretaker Authorizations

- Grandparent Power of Attorney: <https://www.seols.org/wp-content/uploads/2015/08/Grandparent-Power-of-Attorney-Parents-Agree-with-UCCJEA.pdf>
- Caretaker Authorization: <https://www.seols.org/wp-content/uploads/2015/08/Grandparent-Power-Of-Attorney-Parent-Unavailable-with-UCCJEA.pdf>
- Must file the Correct Affidavit and the Parent Proceeding Affidavit (aka UCCJEA form)
- Must sign the form in front of a notary
- Must notify the parents in writing (copy sent by certified mail)
- File with the Juvenile Court where the grandparent resides or any court that has jurisdiction over the child NO LATER THAN 5 days after created and with a receipt showing notice was sent to other parent by certified mail

Terminating a Grandparent Power of Attorney or Caretaker Authorization

- Grandparent Power of Attorney & Caretaker Authorization:
 - Parent can revoke the Authority granted at any time in writing
 - If you believe it is in the best interests of the child to remain with you, you can retain physical custody for 14 days if you file a custody complaint with the court within those 14 days, unless a court orders otherwise
 - Can be revoked by the Juvenile Court
 - Automatically revoked if the child is no longer living with the grandparent
 - Automatically revoked upon the death of the child or the grandparent
- Once terminated, grandparent must notify: schools, healthcare providers, court, and the other parent

Grandparent Visitation Rights



- Grandparents can receive court orders for visitation when:
 - Married parents terminate their marriage and separate;
 - A parent of a child is deceased
 - The child is born to an unmarried woman.
- In these cases, the court will still make the determination based on what is in the best interests of the child
- File Motion to Establish Visitation with the court
 - If there was a case concerning custody of the child (like a divorce or custody action), then you can file while that proceeding is pending in the same court
 - Otherwise, file in the court where the child lives
 - Usually these will be filed with the Juvenile Division of the Common Pleas Court

Guardianship

- Probate Court order appointing a guardian to make decisions for a minor
 - Typically only used when a child does not have living parents, and the child has received a financial award.
 - NOT used to replace custody
- The Court will hold a hearing to determine whether guardianship is appropriate and if the person filing is a suitable guardian
- Guardian must submit to fingerprinting, background check, and attend classes every year regarding his/her duties.
- Guardians must make a written report to the court yearly.



Questions?


Baylee Butler

Staff Attorney

Southeastern Ohio
Legal Services

740-773-0012 ext. 8404

bbutler@seols.org



**This power point presentation was produced by SEOLS under Project # 2018-V3-GX-0067, awarded by the Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this power point are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.