



Grandparent Rights

If someone is keeping you from seeing your grandchildren, Maine law might be able to help you. This section will describe your rights to see your grandchildren through visitation or by establishing custody. There are also laws that can help you if you are taking care of your grandchildren.

Family relationships are complicated and the laws can be confusing. Some of these rules are hard to understand. They may make you feel upset. If you are trying to get visitation rights or establish custody, you need to call an attorney. If you are a Maine resident who is 60 or older, call the Legal Services for Maine Elders Helpline at 1-800-750-5353 to talk to an attorney for free.

Seeing your grandchildren: your visitation rights

Every family is different. Your situation might be better or far worse than the example provided below.

Example

Enid Smith has a beautiful grandson she never sees. When her daughter divorced her husband, she gave him custody of their son—her grandson. Her daughter just couldn't support him. In fact, she had to move out of state to find work. Now, Enid's former son-in-law has remarried. His new wife doesn't want Enid around. She won't let Enid see her own grandchild. She is heartbroken. She loves that child and wants to be part of his life. Is there anything she can do?

A Maine law, the Grandparents' Visitation Act, may help. This law may help you get the right to see your grandchild. But, it will be very hard to win visitation rights in court if the parents do not want you involved. The court will only grant visitation rights in certain, very limited circumstances. For example, the court might grant visitation rights if the child is with you most of the time.

To win visitation rights, you must ask a court for this right.

To start, you also must show one of these:

- You have a strong relationship with your grandchild, you see them routinely, and you have acted like a parent to them.
- Any other compelling state interest that justifies the court's interference with the parent's fundamental right to deny the grandparent access to the child.

Even if you can show that one of the above is true, the court also must find that visitation is in the child's best interest. Some of the factors that the Court must consider in deciding what is in the best interest of the child are:

- The age of the child;
- Whether one of the child's parents or legal guardians has died;
- The relationship between the child and the grandparent;
- The motivation of the parties involved;

- The child's adjustment to their present home, school, and community; and
- Several other factors found in 19-A MRSA §1803.

Pursuing grandparent visitation rights can be a complicated process and you should consult with an attorney about the matter.

What can I do if I am not being allowed to see my grandchild?

You must do everything you can to work things out with the parents. Keep a list of the dates you have called or written and the ways you have tried to stay in touch with your grandchild. You need this proof. If you can't work things out, you can go to court.

Getting help (if there is NOT a court case already)

You will need an attorney to help you file the "Petition" papers in court to start a case. The Petition is where you ask for the right to visit your grandchild. Call the Legal Services for Maine Elders Helpline at 1-800-750-5353 for a referral.

Getting help (if there IS a court case already)

If there is a case already in court - for example, the parents are divorcing or custody is being decided:

1. Call the District Court in the county where the child lives.
2. Get the name and number of the case from the clerk at the court.
3. Write a letter to the judge explaining why you should have the right to visit your grandchild. Give it to the clerk. Send a copy of this letter to each parent's attorney. If there is no attorney, send a copy directly to each parent.

Once you have done this, here's what happens next:

Parents get court papers

Parents of the child must get copies of your Petition papers. You will need to arrange for the sheriff to give them the papers, this is called "serving" them the papers, or you must send the papers to the parents by certified mail. The parents may also file their own papers, called an "Answer," telling the judge their side of the story. They have to give you a copy.

The judge decides next steps: court conference

A judge will look over your papers and decide what comes next. The judge may require you and the parents to meet with a person who is trained to help people resolve disputes - called a "mediator" - to talk about the situation and try and work things out. This is called "mediation." You must do this if the judge orders it. And you have to mediate "in good faith" which means that you and the parents have to participate and make an effort.

The judge may appoint a Guardian ad Litem

The judge may appoint a "Guardian ad Litem" (GAL) to the case. The GAL's job is to investigate the situation and make a recommendation to the judge about what kind of visitation is in the child's best interest. The judge will consider the GAL's recommendations when deciding the case.

During the GAL's investigation, they will talk to the child, the parents, and you. The GAL will also talk to other people who are involved in the child's life. For example, a GAL might talk to: teachers, counselors, or other family members. The GAL will most likely come visit your home

and the home(s) of the parents.

The GAL does not work for you or for the parents. The GAL's only job is to investigate and advocate for the best interests of the child.

The judge decides: court hearing

If you can't work things out with the parents, you will have a hearing in front of a judge. You and the parents need to go to the hearing. If you or the parents decide to call witnesses, they will be there too.

The judge must decide if giving you visitation would meet two legal standards:

1. Visits must be in the "best interests of the child," and
2. Visits must not affect the parent/child relation or the parents' authority.

In making a decision, the judge looks at many things, including: the age of the child, what the child would like, the GAL's recommendation, and your ability and the parents' ability to give the child love and guidance.

Can the judge's decision be changed?

Yes, if the situation changes substantially and someone goes back to court to ask for a change. You can also appeal the judge's decision. You have 21 days after the decision to appeal.

My grandchild is the subject of a child protection order

Child protective cases are closed to the public. Grandparents, and other relatives may write a letter to the judge or ask in person at court to be named either an "interested person," and "intervenor," or a "participant." An interested person can attend court proceedings. Intervenors and participants can attend court proceedings and have the right to speak to the court about the child.

If your grandchild is removed from home under a "Protection Order," you have the right to ask to see your grandchild and ask to have the child placed with you.

You can do this yourself, but it is better to have an attorney do it for you. Call the Legal Services for Maine Elders Helpline at 1-800-750-5353 to talk to an attorney for free.

My grandchild is up for adoption (or has been adopted)

If your grandchild might be adopted or has been adopted, these are the rules:

- If your grandchild is placed with adults who may become his parents and they have signed the legal papers, you do not have the right to visit your grandchild, your rights are "suspended," but you might be able to work something out with the adoptive parents.
- If the adoption does not become final within 18 months, your right to visit your grandchild is "restored." That is, you get it back.
- Sadly, once the adoption becomes final, you have no legal right to visit your grandchild. However, you may be able to work things out with the adoptive parents.

Taking care of your grandchild

Many older people take care of their grandchild. This can happen for any number of reasons. If you are taking care of your grandchild, there are some things you should think about.

For example, consent for medical treatment. Unless you have something in writing that gives you permission, only the parents can consent to medical treatment. This is a problem if the child is with you most of the time. It's very risky if you can't consent to medical treatment, especially in an emergency. There are ways to fix this, such as a Power of Attorney, becoming the child's legal guardian, or adopting your grandchild. At the very least, ask the parents for written permission to take care of your grandchild in the case of a medical emergency.

There are other things that can be tricky; for example, where does your grandchild attend school? An attorney will help you figure out what you need to do. If you are taking care of your grandchild, and you are a Maine resident who is 60 or older, call the Legal Services for Maine Elders Helpline at 1-800-750-5353 to talk to an attorney for free.

Getting financial help for taking care of your grandchildren

If you are taking care of your grandchild, you might be able to get help paying for the care that you provide. If you have a legal agreement, the court might order the parents to pay child support. In some cases, this works. In others, it does not. Before you rely on this money, you should think about the chances that you will actually be able to get it. Some parents cannot afford child support payments. Others just don't want to make these payments. It can be a long, drawn out battle trying to get child support payments from unwilling parents.

You have other options. You might be able to get help through the "Temporary Assistance for Needy Families" (TANF) program. Depending on your income level, you might also be able to get food stamps. And, your grandchild might be able to get MaineCare. Your local Area Agency on Aging will be able to help you find financial help and can help you with the applications. Call your local Area Agency on Aging at 1-877-353-3771.

Taking care of yourself while taking care of others

Caring for a loved one everyday can be stressful, emotional, and exhausting. Because of this, some community services are available to make sure that everyone is getting the help they need.

The Maine Office of Aging and Disability Services created the Family Caregiver Support Program to help those people who are providing care in Maine. The Family Caregiver Program offers information and assistance, individual counseling, support groups, caregiver training, respite care, and other services.

You might benefit from this program. Call your local Area Agency on Aging at 1-877-353-3771 to learn about the services that are available in your area.

Resources

Pine Tree Legal Assistance

The [Pine Tree Legal Assistance website](#) provides information about the process of obtaining Guardianship of a minor.

Area Agency on Aging

To find out what services or resources are available to help you as you care for your grandchild, call your local Area Agency on Aging at 1-877-353-3771.

Office of Family Independence, Maine Department of Health & Human Services

The [Office of Family Independence](#) offers financial assistance. For information about financial

assistance and how to apply, call 1-800-442-6003.

Adoptive and Foster Families of Maine, Inc. (AFFM) & the Kinship Program

Adoptive and Foster Families of Maine, Inc. (AFFM) & the Kinship Program provides support services for adoptive and foster parents, and kinship providers. To find out if they are able to help, call 207-827-2331 or visit their website.

Maine Child Welfare Services Ombudsman

The Maine Child Welfare Services Ombudsman is an impartial office that specializes in assisting people with resolving concerns and complaints with Maine's Child Protective Services Department of the Department of Health and Human Services. If you have a concern or complaint about how Child Protective Services, DHHS is handling a child's case, you may contact the Ombudsman office by email ombudsman@cwombudsman.org or phone 1-866-621-0758 or 207-213-4773.

State of Maine Judicial Branch

The State of Maine Judicial Branch provides information about Grandparents' Visitation cases.

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