

# Nonparental Custody: Frequently Asked Questions and Answers

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# Nonparental Custody: Frequently Asked Questions and Answers

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## Section 1: Introduction

This publication has general information about two ways under Washington law you can to get custody of a child who is not your own. One way is a nonparental custody action filed in court under [Ch. 26.10 RCW](#). The other way, in agreed cases only, is a Temporary Parental Consent Agreement. We also briefly explain the law allowing medical providers to accept consent to medical treatment from kinship caregivers for a child left in their care.<sup>1</sup>

◆ THIS PUBLICATION IS NOT A SUBSTITUTE FOR INDIVIDUAL LEGAL ADVICE. IT DOES NOT TELL YOU HOW THE LAW WILL BE APPLIED IN YOUR CASE.

## Section 2: Actions for Nonparental Custody under Ch. 26.10 RCW

### A. What is an action for nonparental custody?

An action for nonparental custody is a lawsuit brought under [Ch. 26.10 RCW](#). A person who is not the parent (the nonparent) requests legal custody of the child (or children) named in the lawsuit. The person who files the case is called the petitioner.

### B. How do I start an action for nonparental custody?

You file the petition and related documents in the superior court of the county where the child lives or is found, and you have the papers served on the parents and anyone claiming a right to custody or guardianship of the child.

### C. When may I bring a nonparental custody action?

You may bring an action under [Ch. 26.10 RCW](#) only if the child is not in the physical custody of either parent or if you state that neither parent is a suitable custodian.<sup>2</sup>

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<sup>1</sup> This publication does not cover common law actions for co-parentage brought by a “de facto” parent, other ways a nonparent may get custody (example: through juvenile court processes), or actions brought by a nonparent for visitation with a child. Our publication [called Washington Parenting Law for Unmarried Couples Who Are Separating](#) has a description of the developing law in this area. You can get it at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

<sup>2</sup> [RCW 26.10.030\(1\)](#). Throughout the text you will see citations like this. They refer to the law that supports the statement made in the text. The laws and cases discussed can be found at many public libraries, or at the law library, if your county has one. Call the clerk's office to find out if there is a law library open to the public in your county. The Revised Code of Washington (RCW) is also available online at <http://apps.leg.wa.gov/RCW/default.aspx>.

**D. Who must I include as parties in a nonparental custody action?**

You must include as respondents (persons who have the right to respond to the petition) the parents, whether they have been involved in the child’s life or not, any other legal guardians or custodians, and people with court ordered visitation.<sup>3</sup>

**E. What different ways can the nonparental action be resolved?**

A nonparental custody action can be resolved in one of four ways:

1. Dismissal or denial of the petition: the nonparent does not get an order granting custody, or
2. Default: one or more of the respondents do not respond, and the court grants the petition of the nonparent against the defaulting respondent(s), or
3. Agreed order: one or more of the respondents agree to the petition or to some negotiated order, and the court signs an agreed court order between the nonparent and the agreeing respondent(s), or
4. Court decision: when a respondent(s) files a response that disagrees with the petition, the court usually will decide after a trial who gets permanent custody.

**F. What legal rights do I win in a successful court action for nonparental custody?**

Nonparental custody actions, if successful for the nonparent, usually lead to permanent legal custody being awarded to you through a final custody order called a Nonparental Custody Decree. If you as the nonparent have custody, then you have the right to have the child live with you and can make educational, medical, and other major decisions about the child.<sup>4</sup>

**G. I do not really want permanent legal custody. I have agreed to care for the child temporarily. I just need something showing that I have the parents’ permission to care for the child and make decisions. The parents agree. Do we have options other than a court case?**

You can use a “temporary parental consent agreement” instead. Part II below has more information.

**H. What are my chances of gaining custody if I file a nonparental custody action and a parent objects?**

If a parent objects, the court will award legal custody to you only if you can prove that the parents are unfit or that the child’s growth and development would be detrimentally affected

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<sup>3</sup> [RCW 26.10.030\(2\)](#).

<sup>4</sup> In some cases, the court may allow the parent(s) a role in some decision-making.

by living with an otherwise fit parent. (See discussion about the legal standard below.) The court may also deny the petition if it decides there are problems in your own background or the background of any adult in your own household (example: a drug abuse problem), or if the court decides it is not in the child's best interest to live with you.

### **I. What happens if there is a dependency case?**

If Child Protective Services (CPS) or anyone else has started a dependency case in juvenile court, the superior court will not be able to hear the custody case until the juvenile court case ends or until the juvenile court judge agrees to share jurisdiction with the superior court.

### **J. What happens if I do not know or I am not sure who the father is?**

Parents, even those who have had no real contact with the child, have legal claims to custody and visitation with their children. You must make serious efforts to identify, locate, and serve the parents with the petition for nonparental custody.

### **K. How is paternity established?**

There are several ways paternity is established or presumed. In these cases the man must be named in the nonparental custody petition and served with the Petition:

- Paternity by presumption (a man married to the mother near the time the child was born) <sup>5</sup>
- Paternity by affidavit (a man and the mother signed an acknowledgment of paternity after July 1, 1997)
- Paternity by adoption (a man who adopted a child)
- Paternity by court order (a man determined to be the father by court order in a paternity case)
- Paternity in certain surrogate parenting or assisted reproduction circumstances.

If paternity has not been established, you must try to figure out the father's identity and serve the possible father(s) with the Petition. The child's mother may be willing to work with you to identify possible fathers. Even if she is not, you may be able to use court or discovery procedures to identify possible fathers once the case for nonparental custody has been filed. The Family Support Division of the Prosecutor's Office can also sometimes help investigate and establish paternity.

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<sup>5</sup> The presumption of paternity can be rebutted by (1) a court order or by (2) a valid denial of paternity if the mother and the biological father have signed a paternity affidavit and the presumed father has not signed an affidavit of paternity or been legally determined by a court to be the father.

## **L. If I cannot locate a parent, what happens?**

Any parent who is not properly notified of the petition cannot be affected by a nonparental custody decree. This includes parents who cannot be served with the court papers and parents who are unknown. A court may be willing to make a custody decision that is binding against the parent who is found, but this decision cannot affect the other parent's rights. Where a parent is unknown or cannot be found, the court may allow service of court papers by mail or publication upon that parent if the child is in the physical custody of the nonparent.<sup>6</sup> (You must get advance court approval for service by mail. In some counties, you must also get advance court approval for service by publication.)

## **M. How much will it cost me to file a nonparental custody action?**

You must pay a filing fee of \$110 - \$130 to the clerk when the case is filed. Very low-income people may be able to get the filing fee waived. Our publication called [Filing a Motion for Waiver of Your Filing Fee](#) has forms and instructions.

Other costs involved in filing a court action are money to cover copying, and possibly fees for serving papers on the respondents. If a guardian ad litem is appointed, you may be responsible for all or part of the guardian ad litem fees. If you hire an attorney, the costs will be even higher.

## **N. Where should I file the case?**

Before you file, make sure that Washington has jurisdiction over the child and, if so, to file the case in the Superior Court of the county which has proper venue. The next three questions discuss these items.

## **O. Does Washington have jurisdiction over the child (the legal authority to decide custody)?**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)<sup>7</sup>, and, for Indian children, the Indian Child Welfare Act<sup>8</sup> (ICWA) determine if Washington has jurisdiction over the child. (The next section describes ICWA.)

The parties to the case cannot consent to give Washington jurisdiction to decide custody of a child.<sup>9</sup>

If the child has always lived in Washington and no other state<sup>10</sup> has made a custody order about the child, then Washington has jurisdiction. Otherwise, jurisdiction becomes more complicated

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<sup>6</sup> [RCW 4.28.100\(5\)](#)

<sup>7</sup> The UCCJEA, [RCW 26.27 et. Seq.](#), and the Parental Kidnapping Prevention Act (PKPA), [28 U.S.C. §1738A](#), determine whether Washington has jurisdiction over children.

<sup>8</sup> [25 USC §1901](#).

<sup>9</sup> *Campbell v. Campbell*, 180 Ind. App. 351, 388 N.E.2d 607 (1979).

<sup>10</sup> [RCW 26.27.041](#) says a state court must treat an Indian Tribe like a state when applying the general purposes and jurisdictional rules of this law.

to determine. The following are some basic guidelines about jurisdiction. **If you have questions about whether Washington has jurisdiction over the child in your case, talk with an attorney.**

1. **If there is already a court order about custody of the children**, and one of the parties to that case or the child still lives in the state that entered the court order, then that state will continue to have jurisdiction over the child. The custody action should be filed there. (This is called *continuing jurisdiction*.)<sup>11</sup> If Washington has continuing jurisdiction, the case can be filed here.
2. **If no court has ever entered an order about custody of the child, Washington has jurisdiction over the child to make an *initial child custody decision***<sup>12</sup> if:
  - a. The child has lived in Washington with a parent, or a person acting as parent,<sup>13</sup> for at least the six consecutive months (six months in a row) before your court case is filed. Washington is the child's *home state*; OR
  - b. The child is less than six months old and has lived in Washington with parent, or a person acting as a parent since birth, at the time your court case is filed. Washington is the child's *home state*; OR
  - c. Washington was the child's *home state* (either a. or b. were true) within six months before your court case is filed, and one parent, or person acting as parent, has continued to live in Washington since the child left the state.
3. **Even if Washington does not have *continuing jurisdiction* (under 1. above) or *home state jurisdiction* to make an *initial child custody decision* (2. above) over the child**, you still may be able to get a custody order in Washington:
  - if the child is located in Washington and there is an emergency. See the question below.
  - if the child lives in Washington and none of the parties or the child continues to live in the state where the prior custody order was entered.
  - if no other state is the child's *home state* (under the requirements of 2.a., 2.b., or 2.c. above) or if the *home state* decides not to exercise jurisdiction and
    - Washington is the more appropriate forum to decide custody
    - The child and at least one parent (or person acting as parent) have a significant connection with Washington (more than a mere physical presence) and

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<sup>11</sup> [RCW 26.27.211](#)

<sup>12</sup> "Initial child custody determination" means the first child custody order concerning a particular child. See [RCW 26.27.021\(8\)](#).

<sup>13</sup> [RCW 26.27.021\(13\)](#) has the definition of "person acting as a parent."

- There is substantial evidence in Washington regarding the child's care, protection, training, and personal relationships.<sup>14</sup>

**P. Washington does not have jurisdiction. What can I do?**

If Washington does not have jurisdiction over the child under the UCCJEA, then you have a few options:

- (a) You can file for custody in the state that has jurisdiction over the child.
- (b) You can ask the other state to decline jurisdiction and allow Washington to take jurisdiction. In an emergency, you may be able to get a Washington custody order protecting the child while long-term jurisdiction is decided. (See the next section.) If you want to ask another state to decline jurisdiction, talk with an attorney.
- (c) If you are seeking an initial custody decision, you can wait until the child has been in Washington six months so that Washington becomes the child's home state (if no custody proceeding is started in another state in the meantime).

**Q. What emergency jurisdiction is available?**

In certain limited cases to protect a child located in Washington from abandonment or abuse, Washington may be able to take *emergency jurisdiction* over the child.<sup>15</sup>

However, emergency jurisdiction is limited. Washington's orders typically will last only until someone files a case in the state with jurisdiction, unless that state declines jurisdiction.

Emergency jurisdiction requirements are different, depending upon whether or not another state has already made a custody determination concerning this child.

If Washington takes emergency jurisdiction and there is no earlier custody order in another state, the Washington order stays in effect until the state with home state or significant connection jurisdiction issues a custody order. If no custody case is started in that other state, the emergency order issued in Washington may become final if the order allows for this and if Washington becomes the child's home state.

If Washington takes emergency jurisdiction over the child and you want custody to be decided by the state with proper jurisdiction to enter an initial custody decision, you must quickly file a custody action in the other state and have the Washington court communicate with the other state. If you wait too long and Washington becomes the child's home state for making an initial custody decision, the other state can lose jurisdiction to Washington<sup>16</sup>

However, if there is an earlier custody order in another state and that state has continuing jurisdiction (see #1 above), the emergency order in Washington must have a date on which it ends, and, unless the other state declines jurisdiction, Washington's jurisdiction will continue

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<sup>14</sup> [RCW 26.27.201](#); [RCW 26.27.021](#).

<sup>15</sup> [RCW 26.27.231\(1\)](#).

<sup>16</sup> [RCW 26.27.231\(2\)](#).

only until 1) the court with continuing jurisdiction enters an order or 2) the Washington emergency order expires, whichever comes first.<sup>17</sup>

## **R. What if the child is an Indian child?**

If the child is an Indian child, the Indian Child Welfare Act (ICWA) applies to nonparental custody actions.<sup>18</sup> An Indian child is “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”<sup>19</sup> Membership with a tribe is decided by the tribe. Enrollment and membership are not always the same thing. If a child has a connection with an Indian tribe, it is better to give notice and later find ICWA does not apply than to fail to give notice, only to have a court order turn out to be invalid.

If the Indian child lives within the boundaries of an Indian reservation, the tribe has jurisdiction. And if the child is a ward of the tribal court, the tribal court has jurisdiction, even if the child lives outside the reservation boundaries. If the child is not a ward of the tribal court and lives outside the reservation boundaries, the state court must still transfer jurisdiction to the tribal court in some circumstances.

If you want custody of an Indian child, you must serve the petition and other documents on the child’s tribe, as well as to serving the parents.<sup>20</sup> ICWA sets specific standards for services that must be provided before a child can be removed from the parents or Indian custodian. It also sets the level of proof a nonparent petitioner must make to get custody. Example: Culturally relevant services to remedy the problems must be offered. Also, the parents or Indian custodians are entitled to court- appointed attorneys to represent them in the case if they cannot afford one otherwise.

◆ You can find a description of the ICWA requirements in a case called [In re the Interest of Mahaney](#), 146 Wn. 2d 878 (2002). See also the publication [Indian Child Welfare Act](#), available at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

## **S. In what county should I file the case (what is the proper venue)?**

If Washington has jurisdiction over the child under the UCCJEA and ICWA, you should file the case in the Superior Court of the county where the child is domiciled (permanently resides) or can be found.<sup>21</sup>

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<sup>17</sup> [RCW 26.27.231\(3\)](#).

<sup>18</sup> [25 USC §1901](#).

<sup>19</sup> [25 USC §1903\(4\)](#).

<sup>20</sup> [25 USC §1912\(a\)](#).

<sup>21</sup> [RCW 26.10.030](#)

## **If the mother or father has never had contact with Washington State, can I still file the case here?**

Yes, if Washington has jurisdiction over the child.<sup>22</sup> You will need to locate and serve the parents. However, if the parent has not had contact with this state, the Washington court may not be able to order the parent to pay child support.

### **T. What happens after I file the case?**

**Filing a petition for custody is not the same as having final legal custody.** You have permanent legal custody only when the judge signs a Nonparental Custody Decree granting you custody. You have temporary or emergency custody only when a court signs an order granting it.

After you file the case, several things must happen before the court makes a final decision:

- Background court record checks must be made for you and the child.
- Criminal history and CPS history checks must be made for you and every adult living in your household.
- Notice of the case must be given to the parents (and any other legal guardians or custodians). They will have the chance to respond.
- The court must decide that there is enough legal basis for the case to proceed (adequate cause). The court makes its adequate cause decision after a hearing in contested cases.
- The court may enter temporary orders concerning custody, child support, and visitation.
- The court may order that a Guardian ad Litem (GAL) be appointed to investigate what living situation would be in the child's best interests and to make recommendations. Or the court may refer the case to Family Court Services for a similar investigation.
- The court may enter appropriate restraining orders to protect safety and prevent harassment.

The court's final decision is made by agreement, default, trial, or dismissal.

### **U. What background checks do I need?**

Several checks for background information must be made during a nonparental custody case.<sup>23</sup> They include:

- A check of the court records system, to see if other cases concerning the child exist
- A Child Protective Services (CPS) check regarding: the child (to see if s/he has been the alleged victim of abandonment, abuse or neglect) , the petitioner(s), and any person 16 or older living in the petitioner(s) home

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<sup>22</sup> [RCW 26.27.201\(3\)](#)

<sup>23</sup> [RCW 26.10.135](#)

- An examination of state and national criminal records for the petitioner(s) and any adult members of their household.

If these background checks reveal problems, the court will investigate further to decide if the problems might create a poor environment for the child. In serious cases, the court might refer the case to CPS.

#### **V. What if one of the parents is in the military service?**

If one or both of the parents is on active duty in the military service, you may not be able to proceed against them unless they agree or unless an attorney is appointed to represent their interests.<sup>24</sup>

#### **W. What is the legal standard for nonparental custody?**

The court will not grant you (the nonparent) custody of a child over the objection of the child's parent unless you prove either that (1) the parent is unfit, or (2) circumstances are such that the child's growth and development would be detrimentally affected by placement with an otherwise fit parent.<sup>25</sup> It is not enough to show that the child would have a better environment with you.<sup>26</sup> The court applies another standard in cases involving Indian children, as defined in the ICWA. (See below.)

#### **X. What is the legal background for this nonparental custody standard?**

The laws regarding nonparental custody are in the Revised Code of Washington (RCW) at [chapter 26.10](#). The law regarding nonparental custody has also developed from court cases that interpret the statutes. If you are thinking about filing a nonparental custody action, try to read RCW 26.10 and a case called In re the Custody of Anderson, 77 Wn. App. 261 (1995). They explain the legal standard you must meet to win nonparental custody of a child. Other cases that contributed to the development of nonparental custody case law include: In re Stell, 56 Wn. App. 356 (1989), In re the Marriage of Allen, 28 Wn. App. 637 (1981), In re the Custody of Nunn, 103 Wn. App. 871 (2000), In re the Interest of Mahaney, 146 Wn. 2d 878 (2002), In re the Custody of S.H.B., \_\_\_ Wn. 2d \_\_\_ (2005), and In re the Custody of Shields, 120 Wn. App. 108 (2004).

These cases conclude that the burden is on the nonparent seeking custody to establish either (1) that the parent is unfit or (2) that circumstances are such that the child's growth and development would be detrimentally affected by placement with an otherwise fit parent. An example of #2 might be a situation where a parent is living with a physically abusive person. The nonparent must show actual detriment to the child, not just that a different custody arrangement is in the child's "best interest."

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<sup>24</sup> Service Members Civil Relief Act, 50 U.S.C. App., Sec. 501 et.seq.

<sup>25</sup> This is a harder standard than the "best interest" legal standard applied between parents. Parents have a constitutional right to raise their children.

<sup>26</sup> In re the Custody of Anderson 77 Wn. App. 261 (1995).

Unless a parent is found to be unfit, the fact that a parent needs to improve his/her parenting skills or has issues to be addressed may not be enough to meet the legal standard. Example: in the Anderson case, the mother had exhibited instability while raising her other children. She had gone to Alaska to avoid a problem, had moved from place to place within Alaska, and she lacked a definite plan for the present. Nevertheless, the Court of Appeals said that unless the petitioners could show actual detriment to the child from these or other factors, these things alone did not meet the legal standard for awarding custody to nonparents.

#### **Y. Are the standards different for an Indian child?**

Yes. If a nonparental custody case involves an Indian child as defined by the Indian Child Welfare Act (ICWA), the court must apply the legal standards required by the ICWA. The court will only grant a nonparent custody of the child if there is clear and convincing evidence, including testimony of a qualified expert witness, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. [25 USC §1912\(e\)](#). If the court does not apply the ICWA in a nonparental custody case regarding an Indian child, the resulting custody order will be invalid.

#### **Z. What is an Adequate Cause hearing?**

The purpose of an adequate cause hearing is to decide if the petitioner has a strong enough legal basis to proceed with the case. You must submit declarations stating that the child is not in the physical custody of one of his/her parents, or that neither parent is a suitable custodian. You must include facts that support these claims.<sup>27</sup> The parents/respondents can submit evidence disputing these claims and showing their suitability. Some counties may allow or require live testimony at adequate cause hearings. Some counties may require that all claims be submitted in written declarations before the hearing and do not allow live testimony. If adequate cause for the petition is not shown at this hearing or by an agreed order signed by the parties and approved by the court, the case will end.

#### **AA. Can I get temporary and emergency orders?**

Yes, in some cases. A temporary order is a court order that gives certain rights and/or protections while the court action is in process. An emergency order is an order that lasts until a hearing on temporary orders can be held. Temporary and emergency orders can decide custody until the next hearing or until trial, can set child support, can restrain violence and harassment, or can give other appropriate temporary relief.

Domestic Violence Protection Orders may also be available.<sup>28</sup>

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<sup>27</sup> [RCW 26.10.032](#)

<sup>28</sup> Ch. [26.50 RCW](#)

## **BB. What does a Guardian ad Litem (GAL) do?**

The court may appoint a guardian ad litem (GAL) to represent the best interest of the child during the court case. S/he is appointed at the request of a party, or sometimes at the court's own initiative. S/he can be a private GAL (whose expenses the parties usually pay), or a Court Appointed Special Advocate (CASA) volunteer. Or sometimes the court asks for an investigation by the Family Court Services staff (sliding scale payment). The GAL will interview the parties, review the court file, talk to witnesses, and get records. S/he can ask for evaluations. S/he will usually make a report to the court with recommendations about what s/he believes is in the child's best interest. Our publication [Working with GALs and Parenting Evaluators](#) has more information.

### **◆ GALs ARE "MANDATED REPORTERS:"**

State law requires a GAL to report a family to law enforcement or to CPS when the GAL has a reason to believe that a child in a family the GAL is investigating has been abused or neglected.

## **CC. I am a parent. I know there are some issues that keep me from taking good care of my child, but I do not want to lose permanent custody. What can I do?**

If you lose **temporary** custody **during** a nonparental custody case, you can still try to get custody back **before final orders are signed**. You should:

- Ask for as much residential time with the child as the court will allow. Use every bit of time the court grants. Make sure the visitation time is specifically set out in orders the court signs.
- Find and use services or treatment necessary to address the problems that led to the petition being filed. (Example: alcohol treatment, if you have an alcohol problem.)
- Try to negotiate or argue in court that, if the nonparents are awarded custody, the custody decree should state the conditions under which the child will return to you (example: upon completion of alcohol treatment).

If the child is placed with the nonparent by a temporary order and there is no final decree yet, you can file a motion for a new temporary order when your situation is better. However, the standard for changing custody back to you the parent is much harder to meet when a final custody decree is entered.

## **DD. If I am a parent and I lose legal custody, what rights do I have?**

If a nonparent is awarded custody of your child, you still have a right to visit the child, unless the visitation itself would be harmful to the child. Your visitation with your child can be limited if the court finds that you have:

- Willfully abandoned the child for an extended time or substantially refused to perform parenting duties
- Engaged in physical, sexual, or a pattern of emotional abuse of a child
- Had a history of acts of domestic violence or an assault or sexual assault that has caused grievous bodily harm
- Been convicted as an adult of certain sex offenses<sup>29</sup>

Your visitation time will also be limited if the court finds you live with a person who has engaged in any of the last three items above.

Also, unless the court specifically orders otherwise, you will still have full and equal access to the child’s school and medical records.<sup>30</sup>

**EE. Will I have to pay child support if a nonparent is awarded custody?**

Yes. If the court has personal jurisdiction over you (if you have had sufficient contact with this state), then the court will set child support if it enters a nonparental custody decree. The amount of support will depend upon your income. If the court lacks jurisdiction to set child support, the Division of Child Support (part of DSHS) will often set child support through interstate procedures.

**FF. How long does a Nonparental Custody Decree last?**

Based on the agreement of the parties (as shown in the final custody decree) or on the decision of the court, the nonparental custody decree can include the specific circumstances or conditions under which a parent can regain custody of the child. If the decree does not contain such a provision, it can be hard for a parent to regain custody of the child. The decree can be substantially changed in the future only by signed agreement of the parties and approval by the court, or, by a party proving the difficult legal standards needed to modify a custody decree.<sup>31</sup> Minor changes, such as making limited changes in visitation, are easier to make if they are in the child’s best interest.<sup>32</sup>

**Section 3: Temporary Parental Consent Agreements**

**A. The parent(s) have asked me to care for the child temporarily. I do not want permanent legal custody. I just need something to show third parties proving the parent(s) agreed to let me have**

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<sup>29</sup> [RCW 26.10.160](#)

<sup>30</sup> [RCW 26.10.150](#).

<sup>31</sup> [RCW 26.10.190](#) and [RCW 26.09.260\(1\)](#).

<sup>32</sup> [RCW 26.10.190](#) and [RCW 26.09.260\(5\)](#).

## **custody temporarily. Do we have options other than a lawsuit for permanent legal custody?**

In many situations, a “temporary parental consent agreement” can give you the authority to make medical and educational decisions affecting the child, and to get care and services for the child. The agreement can show that the parent(s) have given you permission to care for the child. With such an agreement, schools, doctors, and others may accept your authority to act on the child’s behalf.

A temporary parental consent agreement is a written agreement between the parent(s) and you. It is not a court order. It does not restrict parental rights. The parent can cancel it at any time. It is helpful only as long as both sides honor the agreement and third parties (examples: schools, doctors, insurance companies) recognize it.

### **B. How long does a Temporary Parental Consent Agreement last?**

It lasts as long as both you and the parents want it to last. It is not a permanent solution, however. If you are going to be caring for the child for more than a year, you should seek a more formal legal relationship, such as nonparental custody.

### **C. When is a temporary parental consent agreement not enough?**

A temporary parental consent agreement does not prevent a parent from taking a child back. If you do not want the child’s parents to be able to take the child back, you must get a custody order through the court.

In addition, some third parties such as schools, doctors, insurance companies, or government agencies may not honor the agreement.

### **D. What is included in a temporary parental consent agreement?**

The adults involved decide exactly what the agreement should say. It should cover the following:

- that the parent(s) consent to you having temporary residential care of the child, either for a specific period of time (example: “from May 1, 2005 until the end of the school year”), or, where the end date is uncertain, “indefinitely.”<sup>33</sup>
- that you have the authority to provide all necessary care, to make medical and dental decisions, to arrange for child care, and to make educational decisions. You can be as

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<sup>33</sup> If the agreement is “indefinite,” it can continue to be good even if the child is with you longer than originally expected. An expired temporary parental consent agreement will not help and cannot be renewed unless the parent will do so at the time renewal is needed. Note, however: Regardless of the time frame set out in the agreement, the parent can ask to have the child back at any time. If the parent asks for the child back, you must give the child back, unless you have gotten a court order allowing you to keep the child.

specific or general as you all wish. Example: the parent can authorize you to make most medical decisions, but also say that the parent wants to be the one to decide if the child needs surgery.

- that the parent can revoke (cancel) the agreement at any time.<sup>34</sup>

The agreement can also include a statement regarding visitation with the child and an agreement for payment of child support.

**E. What happens if the temporary parental consent agreement has not run out but the parent who signed it now wants the child back?**

Regardless of the time frame set out in the agreement, the parent(s) can ask to have the child returned at any time. If the parent(s) asks for the return of the child, you must return the child unless you have a court order allowing you to keep the child.

**F. Should both of the child's parents sign the temporary parental consent agreement?**

Yes. However, if one parent is absent or unknown, only the other parent has to sign. Your agreement should state that the other parent is absent or unknown.

**G. I am a parent. When should I consider signing a Temporary Custody Agreement?**

When you have already decided to have another person (such as a grandparent) temporarily care for your child, and when you have confidence that person will properly care for the child, a temporary parental consent agreement can show third parties, such as schools, that the person has your permission to care for the child.

Do not use the agreement

- to avoid the threat of a lawsuit or
- if you have any concerns about the care your child will get or
- if you have any doubts about the custodian's willingness to return the child to you at the end of the agreement or earlier.

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<sup>34</sup> It helps if the agreement requires the parents to revoke the agreement in writing. That way, it will be clear when the parent(s) wants to take the child back permanently, and not just for a short while. Requiring a parent to revoke in writing cannot legally stop the parent(s) from simply taking the child back at any time without advance written notice, but the parties may be willing to voluntarily follow this procedure.

You may also have to pay child support, even when the agreement does not call for it, if the nonparent gets public assistance for the child or if s/he applies for child support services from the Child Support Division of the Washington State Department of Social and Health Services.

Also, even though you can cancel the agreement, the nonparent can still file a lawsuit for custody if you later disagree about where the child should live. And law enforcement officials may hesitate to help return the child to you if you revoke the agreement, even if the nonparents do not have a court order.

## **H. Can we write our own temporary parental consent agreement?**

You do not need a lawyer to draft a temporary parental consent agreement. For further information about temporary parental consent agreements, contact CLEAR at 1-888-201-1014 if you are low-income and live outside King County. If you live inside King County, call the King County Bar Association Neighborhood Legal Clinics at (206)267-7070 or Eastside Legal Assistance Advice Clinics at (425) 747-7274.

You should have your agreement signed in front of a notary public.<sup>35</sup> It is not legally required, but third parties may be more likely to accept the agreement if it is been notarized. If you cannot do a formal notarized agreement, even a handwritten letter signed by the child's parent is better than nothing.

A sample Temporary Parental Consent Agreement and brief instructions are attached to the end of this publication.

If you can afford it, have a lawyer who handles family law issues write your agreement or review the agreement you have prepared. A lawyer can help you think about all the issues and write an agreement that really meets your needs.

Keep the original agreement in a safe place. Make copies for schools, doctors, and so on. as needed.

## **I. The child I have been taking care of needs medical treatment. What can I do?**

When you need consent from an adult to provide a child with medical care, the law allows a medical provider to accept the consent for most types of medical treatment from adults in the following order of priority:

1. a court-appointed guardian or legal custodian
2. a person authorized by a juvenile court order (if the child is in an out of home placement)
3. a parent
4. a person who has an authorization signed by the child's parent giving him/her authority to make health care decisions for the child

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<sup>35</sup> A Notary Public can often be found at banks or at public offices.

5. a competent adult who represents that s/he is a relative responsible for the health care of the child, or a competent adult relative who has signed and dated a declaration under penalty of perjury stating that s/he is a relative responsible for the health care of the child. The declaration is effective for up to 6 months.<sup>36</sup> The medical provider may ask the relative to give reasonable evidence of the relationship and his/her responsibility for the health care of the child. Note: So long as the medical provider does not know the representations or declaration to be false, the provider may, but **does not have to** rely on the representations or declaration. The medical provider also may require documentation of the person's claimed status as a relative responsible for the health care of the child. The publication [\*A Kinship Caregiver's Guide to Consenting to Health Care\*](#) has an explanation and a sample declaration form. Find it at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org).

◆ The Northwest Justice Project appreciates the assistance provided by [Legal Voice](#) in the creation of this publication, specifically the temporary parental consent agreement and information about it.

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<sup>36</sup> Chapter 440, Laws of 2005, amending RCW 7.70.065.

## **Section 4: Instructions for Temporary Parental Consent Agreement**

This is a sample form for you to use or modify as fits your situation. Try to have a family law attorney review your agreement before you finish it.

Some things to think about putting in each section of the form:

1. State the names of the parent(s) who are signing the consent and the name(s) and birth date(s) of the child(ren).
2. State the name of the person/people who will be caring for the child(ren) and their relationship to the child(ren) (example: grandparents). State the caregiver's address.
3. State any restrictions on decision-making. Remember: if there are restrictions, the parent signing the consent must be available to make decisions in the restricted area. If the parent is not available when the decision in the restricted area needs to be made, there may be no one who can decide.
4. Write in the circumstances for out-of-state travel, or write "Out-of-state travel is not allowed."
5. Write in an end-date or end-condition for the agreement (example: "until mother is discharged from the military service" or "until June 15, 2005"). If the parties do not know how long the agreement will last, write in "indefinite."
6. Both parents need to consent if their identities are known and if both can be located. If only one parent is signing, s/he needs to explain the reasons why the other parent has not signed the consent.
7. Write in any additional items in your agreement. Examples: specific address and telephone information, an agreement to provide notice of changes, a specific visitation schedule, activities and events the caregiver would notify the parent of, etc.

Once the form has been prepared, the parents should sign it. Although the law does not require the form to be notarized, third parties may be more likely to accept the signatures as valid and to honor the agreement if a Notary Public has witnessed the signatures. Notary Publics are often available at banks or public offices. They may charge a small fee for their services.

## Temporary Parental Consent Agreement

1. I am/We are \_\_\_\_\_ the parent(s) of \_\_\_\_\_ [child(ren)'s name], who was/were born on \_\_\_\_\_ [date]. I am / We are 18 years old or older.

2. I/We hereby give consent for \_\_\_\_\_ [child(ren)'s name(s)] to remain in the residential care of \_\_\_\_\_ [caregiver's name and relationship to the child(ren)] who live(s) at \_\_\_\_\_ [street, city, state] .

3. I/We hereby authorize this caregiver to have the care and control of the child, to make health care decisions for the child, to have the authority to get and provide all necessary care, including emergency and routine medical and dental care, evaluations and treatment, and to make all necessary childcare and educational arrangements for the child while the child is in her/his/their care with the following restrictions: \_\_\_\_\_

\_\_\_\_\_. I/We authorize the above named caregiver(s) to make decisions on all other issues regarding the child [i.e.: religious decisions, decisions about the child's social life, decisions about the child's school activities, and personal care decisions (i.e. haircuts, pierced ears, etc.)] with the following restrictions: \_\_\_\_\_

4. I/We hereby authorize this caregiver to take the child out of state for vacations under the following conditions: \_\_\_\_\_

5. This agreement lasts until \_\_\_\_\_ [write in an end date or write "indefinitely"], unless it is revoked before expiration. Either parent can revoke this consent and terminate this agreement at any time by delivering to the caregiver a signed, written notice at least a week in advance.

6. (The following paragraph applies if only one parent is available to consent) [  ] I am the sole custodian of the child. The other parent has not signed this consent because \_\_\_\_\_ [explain whether the other parent is unknown or absent].

7. Additional items:

\_\_\_\_\_  
Mother of Child(ren)

\_\_\_\_\_  
Father of Child(ren)

NOTE: This form does not need to be notarized to be valid.

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_

AGREED:

\_\_\_\_\_  
Caregiver

Date: \_\_\_\_\_

\_\_\_\_\_  
Caregiver

Date: \_\_\_\_\_