
Understanding When Grandparents and Others Can Seek Custody

Recently, Act 21 of 2018 was enacted in Pennsylvania, expanding the rights of grandparents and other third parties to seek custody (both physical and legal custody) of minor children upon meeting certain criteria. To do this, however, the person seeking custody must first have standing.

What Is Standing?

Standing is the legal term for the requirements that an individual must meet to be able to request certain relief in the court system. In a custody matter, a person who doesn't have standing is unable to ask the court to grant him or her custody or ask for other relief.

How Do I Know if I Have Standing?

Under Pennsylvania law, there are certain requirements which must be met for an individual to have standing. Those requirements depend on what type of custody you are seeking. For example, there are different requirements depending on whether you are asking the court to grant you partial physical custody or primary physical custody of the child. To determine whether you have standing, you should carefully review the requirements, which are summarized below, and determine whether you can meet them based on your situation and the child's situation.

Parents and In Loco Parentis

Parents and those who are in loco parentis to the child have standing to seek any form of physical or legal custody. In loco parentis means a person has assumed the rights and responsibilities of a parent, with

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the consent of the child's parents. For example, if the child's parents have permitted the child to move in with you for an extended period of time because they are unable to care for the child, you may be in loco parentis. Similarly, a stepparent who assumes the rights and responsibilities of a parent may be in loco parentis and may be able to seek custody of the child, even after the relationship with the parent has ended.

Grandparents and Great-grandparents

If a grandparent or great-grandparent is in loco parentis to the child (see above), he or she would have standing to seek any form of custody.

If the grandparent or great-grandparent is not in loco parentis to the child, he or she would have standing to seek any form of custody if they can meet certain requirements:

- Their relationship with the child began with the consent of a parent or under a court order; and
- The grandparent or great-grandparent assumes or is willing to assume responsibility for the child; and
- One of the following conditions must be met:
 - The child has been determined to be a dependent child by the juvenile court;
 - The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity;
 - The child has for a period of at least 12 consecutive months resided with the grandparent, and is removed from the home by the parents; in that situation a grandparent must file a custody case

within six months after the removal of the child from the grandparent's home.

If the grandparent or great-grandparent cannot meet the requirements to seek "any form of custody," they may be able to seek partial physical or supervised physical custody if they can meet the following requirements:

- If one of the parents of the child is deceased, the parent or grandparent of the deceased person may have standing to seek partial or supervised physical custody.
- If the parents of the child have commenced a custody proceeding and the parents do not agree as to whether the grandparent or great-grandparent of the child should have custody, then the grandparent or great-grandparent may have standing to seek partial physical or supervised custody if their relationship with the child began either with the consent of one of the parents or under a court order.

Other Third Parties

Under limited circumstances, where neither parent of the child has any form of care or control of the child, other third parties may have standing to seek custody. Specifically, an individual may have standing if he or she can show that the following three requirements are met:

1. Neither parent has any form of care or control of the child;
2. He or she has assumed or is willing to assume responsibility for the child; and
3. He or she has a sustained, substantial

and sincere interest in the welfare of the child.

If all three requirements are met, then a third party individual may have standing to seek custody of the child.

What if the Local Office of Children, Youth and Families Is Involved?

The above provisions regarding standing may not apply if the child has been found to be a dependent child by the juvenile court or if the juvenile court has entered an order of permanent legal custody. If the child has been found to be dependent by the juvenile court, grandparents and other interested third parties are encouraged to contact the appropriate county office of Children, Youth and Families and offer to be a kinship resource for the child.

How Can I Locate an Attorney?

Call the Pennsylvania Bar Association Lawyer Referral Service toll free at 800-692-7375. Many counties have this same service at the local level.

Special note: This pamphlet has been issued to inform and not to advise. It is based on Pennsylvania law. The statements are general, and individual facts in a given case may alter their application or involve other laws not referred to here.