

Non-Parent Custody: Frequently Asked Questions and Answers

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Non-Parent Custody: Frequently Asked Questions and Answers

Section 1: Should I read this?

Yes, if you want general info about how under Washington law you can get legal custody of a child who is not yours through:

- a non-parent custody petition filed in court under [Ch. 26.10 RCW](#)
- a Temporary Parental Consent Agreement (agreed cases only)

We also explain the law allowing medical providers to accept consent to medical treatment from some non-parents for a child in their care.

❖ This is not a substitute for individual legal advice. It does not tell you how the court will apply the law in your case.

Section 2: Who should not read this?

This does not cover

- “De facto” parents
- Other ways a non-parent can get custody (**example:** juvenile court)
- Non-parent looking for visitation with a child

[Washington Parenting Law for Unmarried Couples Who Are Separating](#), available at www.washingtonlawhelp.org, describes the developing law in this area.

Section 3: General Info

A. What is a non-parent custody petition?

A person who is not the parent files a court case asking for legal custody of the child (or children) named in the court case.

❖ The person filing the case is the Petitioner.

B. What do I have to prove to win my non-parent custody case?

If the child’s parent objects to the case, you must prove either that

- the parent is unfit OR

- placement with an otherwise fit parent would negatively affect the child's growth and development

Example 1: A parent is living with a physically abusive person. The non-parent must show actual detriment to the child, not just that a different custody arrangement is in the child's "best interest."

Example 2: The mother has demonstrated instability while raising her child. She moved to Alaska to get away a problem. She has moved from place to place within Alaska. She lacks a definite plan for the present. These things alone do not meet the legal standard for awarding custody to non-parents. You would have to show actual detriment to the child from these or other factors,

❖ The court applies an even tougher standard in cases involving Indian children, as defined in the Indian Child Welfare Act. (See section 5 below.)

C. Where can I read the law about non-parent custody?

The non-parent custody laws are in the Revised Code of Washington (RCW) at [chapter 26.10](#).

D. Should I file a non-parent custody action?

Yes, if the child is not in either parent's physical custody OR neither parent is a suitable custodian. [RCW 26.10.030\(1\)](#).

E. Who are the other parties in a non-parent custody action?

You must include as respondents (persons who have the right to respond to the petition):

- the child's parents, even if they have not been involved in the child's life
- any other legal guardians or custodians
- anyone with court-ordered visitation ([RCW 26.10.030\(2\)](#))

F. How does a non-parent custody case end?

One of these ways:

- **Dismissal or denial of the petition** - the non-parent does not get a custody order.
- **Default** - one or more respondent/s do not respond (they default). The court grants the petition against those respondent(s).
- **Agreed order** - one or more respondent/s agree to the petition or to some negotiated order. The judge signs an agreed order between the non-parent and agreeing respondent(s).
- **Court decision** - A respondent(s) files a response disagreeing with the petition. The judge usually decides who gets custody after a trial.

G. I filed for non-parent custody. What do I get if I win?

The judge will award you permanent legal custody through a Final Non-Parent Custody Order giving you:

- the right to have the child live with you.
- the right to make educational, medical, and other major decisions about the child.

❖ The court might allow the parent(s) a role in some decision-making.

H. I have agreed to care for the child temporarily. I just need something showing I have the parents' permission to care for the child and make decisions. What can we do?

You can use a “Temporary Parental Consent Agreement” instead. Section 7 below has more info.

I. How much does it cost to file a non-parent custody petition?

You must pay the clerk a filing fee of \$110 - \$130 when you file. If you are very low-income, you may be able to get the filing fee waived (canceled). Our packet called [Filing for Waiver of Your Filing Fee](#) has forms and instructions.

You may have to pay other costs too:

- Money to cover copying.
- Fees for serving papers on the respondent/s.
- If the judge appoints a Guardian ad Litem (GAL), you may be responsible for all or part of any GAL fees. (Section 6, paragraph O has more info about GALs.)
- If you hire a lawyer, it will cost even more.

Section 4: Jurisdiction (Authority to Decide the Case)

A. Where should I file the petition?

First, make sure Washington has jurisdiction over the child. If it does, you must file in the county that has proper venue. Read the next three sections carefully.

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

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, [RCW 26.27 and so on](#)), and, for Indian children, the Indian Child Welfare Act (ICWA, [25 USC §1901](#)) determine if Washington has jurisdiction over the child. The next section describes ICWA.

❖ You cannot agree to give Washington jurisdiction to decide custody.

If the child has always lived in Washington and no Indian tribe or other state has issued a custody order about them, Washington has jurisdiction. [RCW 26.27.041](#). If not, jurisdiction becomes more complicated.

Here are some basic guidelines. **If you do not know if Washington has jurisdiction over the child in your case, talk with a lawyer.**

1. **If there is already a custody order**, and the child OR one of the parties to that case still lives in the state that entered the order, that state still has jurisdiction over the child. File there. (We call this *continuing jurisdiction*. [RCW 26.27.211](#).) If Washington has continuing jurisdiction, file here.
2. **If no court has ever entered a custody order about the child, Washington has jurisdiction to make an *initial child custody decision* ([RCW 26.27.021\(8\)](#)) if one of these is true:**
 - a) The child has lived in Washington with a parent OR someone acting as parent ([RCW 26.27.021\(13\)](#)) for at least the past six months before you file. Washington is the child's *home state*.
 - b) The child is under six months old and has lived in Washington with a parent OR someone acting as parent since birth at the time you file. Washington is the child's *home state*.
 - c) Washington was the child's *home state* (either a. or b. were true) within six months before you file, and one parent OR person acting as parent has been living in Washington since the child moved away.
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), you still may be able to get a custody order in Washington if one of these is true:**
 - The child is in Washington and there is an emergency. See the question below.
 - The child lives in Washington and none of the parties or child still lives in the state that entered the last custody order.
 - No other state is the child's *home state* (under the requirements of 2.a., 2.b., or 2.c. above), OR the *home state* decides not to exercise jurisdiction AND one of these:
 - Washington is the more appropriate state to decide custody.
 - The child and at least one parent (or person acting as parent) has a significant connection with Washington (more than just physical presence).
 - There is a lot of evidence in Washington about the child's care, protection, training, and personal relationships. [RCW 26.27.201](#); [RCW 26.27.021](#).

C. Washington does not have jurisdiction over the child. What can I do?

You can:

- File for custody in the state that has jurisdiction.
- Ask the other state to decline (turn down) jurisdiction and let Washington 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.) Talk to a lawyer.
- If you are seeking an initial custody decision, wait until the child has been in Washington six months. If no one files a custody case in another state in the meantime, Washington will become the child's home state.

D. How does emergency jurisdiction work?

Washington may be able to take *emergency jurisdiction* in a few cases to protect a child in Washington from abandonment or abuse. [RCW 26.27.231\(1\)](#). **Emergency jurisdiction is limited.** The Washington order typically will last only until someone files a case in the state that has jurisdiction, unless that state declines jurisdiction.

Emergency jurisdiction depends on whether another state has already issued a custody order about the child:

Washington takes emergency jurisdiction and there is no earlier custody order in another state: the Washington order is good until the home state or significant connection jurisdiction state issues a custody order. If no one files for custody in that other state, Washington's emergency order may become final.

Washington takes emergency jurisdiction over the child. You want custody decided in the state with proper jurisdiction to enter an initial custody decision: you must quickly file a custody case in the other state and have the Washington court communicate with the other state. If you wait too long, Washington may become the child's home state. The other state can lose jurisdiction to Washington. [RCW 26.27.231\(2\)](#).

There is an earlier custody order in another state. That state has continuing jurisdiction (see #1 above): the Washington emergency order must have a date it ends. Unless the other state declines jurisdiction, Washington's jurisdiction will continue only until whichever of these comes first:

1. the court with continuing jurisdiction enters an order.
2. the Washington emergency order expires. [RCW 26.27.231\(3\)](#).

E. What county should I file the case in (what is the proper venue)?

If Washington has jurisdiction over the child under the UCCJEA and ICWA, you should file in the Superior Court of the county where the child permanently lives or can be found. [RCW 26.10.030](#).

Section 5: Indian Children

A. Who is an Indian child under the law?

The [ICWA \(Indian Child Welfare Act, 25 USC §1901\)](#) defines an Indian child as any unmarried person under age eighteen and either

1. a member of an Indian tribe OR
2. eligible for membership in an Indian tribe and the biological child of a tribal member

[25 USC §1903\(4\)](#).

❖ Enrollment is not always the same as membership.

B. I am filing for non-parent custody of an Indian child as defined by the ICWA. What should I do?

STOP HERE. The ICWA will apply to your non-parent custody action. You must follow the ICWA's requirements. Get [Filing for Non-Parent Custody of an Indian Child in State Court](#) and [Indian Child Welfare Act](#), available at www.washingtonlawhelp.org, for more info.

Section 6: What if...

A. What if I file a non-parent custody action and a parent objects?

The judge will award you custody only if you can prove:

- the parents are unfit OR
- living with an otherwise fit parent would detrimentally affect the child's growth and development (see discussion about the legal standard below)

The court **may** also deny the petition if it decides:

- there are problems in your background or the background of any adult in your household (**example**: a drug abuse problem)
- it is not in the child's best interest to live with you

B. What 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 must wait until the juvenile court case ends OR the juvenile court judge agrees to share jurisdiction with the superior court.

C. What if I do not know or am not sure who the father is?

You still must try hard to identify, find, and serve the parents. Even parents who have had no real contact with the child still have legal claims to custody and visitation.

D. How do I establish paternity?

In each of these ways, you must name the man in the non-parent custody petition and have him served:

- Paternity by presumption (a man married to the mother near the time the child was born)
- Paternity by affidavit (a man and the mother signed an acknowledgment of paternity after July 1, 1997)
- Paternity by adoption (a man adopted a child)
- Paternity by court order (a man determined to be the father by court order in a paternity case)
- Paternity in some cases involving surrogate parenting or assisted reproduction

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. If not, you may be able to use court or discovery procedures to identify possible fathers once you have filed your Petition. The Family Support Division of the Prosecutor's Office can also sometimes help.

E. What if I cannot find a parent?

A non-parent custody order will not affect any parent who does not get proper notice of the petition. This includes

- parents you cannot serve with the court papers
- parents who are unknown

❖ The judge may issue a custody order binding the parent you have found. It will not affect the other parent's rights.

Where a parent is unknown or you cannot find them, and the child is already in your physical custody, the court may allow service of court papers on that parent by mail or publication. [RCW 4.28.100\(5\)](#). (You need advance court approval for service by mail. You

might need advance approval for service by publication. Our [Service by Certified Mail or Publication](#) packet has more info.)

F. What if a parent has never had contact with Washington State?

You can file here **if** Washington has jurisdiction over the child. [RCW 26.27.201\(3\)](#). You must find and serve the parents. The Washington court may not be able to issue a child support order against a parent who has had no contact with Washington.

G. What if a parent is in the military?

You may not be able to proceed against them unless they agree OR the judge appoints a lawyer to represent their interests. [Service Members Civil Relief Act, 50 U.S.C. App., Sec. 501](#) and so on.

H. I have issues keeping me from taking care of my son or daughter. I do not want to lose permanent custody. What can I do?

If you lose **temporary** custody **during** a non-parent custody case, you can still try to get custody back **before the judge enters final orders**:

- Ask for as much visitation as the judge will allow. Use all the time the judge grants. Make sure the judge specifically sets out visitation time in the orders.
- Find and use services/treatment to address the problems that led to this case. (**Example:** alcohol treatment, if you have a drinking problem.)
- Try to negotiate or argue in court that, if the non-parents win custody, the custody order should state when/if you can get the child back (**example:** when you finish alcohol treatment).

If the court issued a temporary order placing the child with the non-parent and there is no final order yet, you can file a motion for a new temporary order when your situation is better. The standard for changing custody back to the parent is much harder to meet after the court enters a final custody order.

I. I am a parent. If I lose legal custody, do I have any rights left?

You have a right to visitation unless it would harm the child. The judge can limit your visitation if they find you have:

- Willfully abandoned the child for a long time or substantially refused to perform parenting duties
- Physically, sexually, or emotional abused 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 ([RCW 26.10.160](#))

The judge will also limit your visitation time if they find you live with someone who has engaged in any of the last three items.

❖ Unless the judge specifically orders otherwise, you will still have full and equal access to the child's school and medical records. [RCW 26.10.150](#).

J. I am a parent. Will I have to pay child support if a non-parent wins custody?

Yes, if the court has personal jurisdiction over you (if you have had sufficient contact with this state). How much you must pay will depend on your income. If the court lacks jurisdiction to set child support, the Division of Child Support (DCS, part of DSHS) may set child support.

K. What happens after I file the case?

Here is what must happen next:

- Background court record checks on you and the child.
- Criminal history and CPS history checks for you and every adult in your household.
- The parents (and any other legal guardians or custodians) must get notice of the case and have the chance to respond.
- If a parent objects to the petition, the judge must hold a hearing to decide there is legal reason (adequate cause) for the case to go forward.
- The judge may enter temporary orders about custody, child support, and visitation.
- The judge may appoint a Guardian ad Litem (GAL) - or refer the case to Family Court Services - to investigate what is in the child's best interests and make recommendations.
- The judge may enter restraining orders to protect safety and prevent harassment.
- At some point there will be a final decision by agreement, default, trial, or dismissal.

L. What background checks do I need?

They include:

- A check of the court records system for other cases about the child
- A Child Protective Services (CPS) check of the child (if they have been the alleged victim of abandonment, abuse or neglect) , Petitioner(s), and anyone age 16 or older living in Petitioner's home

- An examination of state and national criminal records for Petitioner(s) and any adult members of your household

[RCW 26.10.135](#).

If these background checks uncover problems, the judge will investigate to decide if they might create a poor environment for the child. The judge might refer serious cases to CPS.

M. What is an Adequate Cause hearing?

It is where the judge decides if Petitioner has a strong enough legal basis to let the case go forward. You submit declarations stating the child is not in a parent's physical custody OR neither parent is a suitable custodian. Your declarations must include facts supporting these claims. [RCW 26.10.032](#). The parents/respondents can submit evidence disputing these claims and showing their suitability to have the child.

Some counties may allow or require live testimony at adequate cause hearings. Others may require you to submit all claims in written declarations before the hearing.

A judge who does not find adequate cause for the petition at this hearing or by an agreed order will end (dismiss) the case.

N. Can I get temporary and emergency court orders?

Yes, in some cases. A **temporary order** gives certain rights and/or protections while the case is in process. An **immediate restraining order** lasts until the judge can hold a hearing on temporary orders. These orders can:

- decide custody until trial or the next hearing
- order child support
- restrain violence and harassment
- give other appropriate temporary relief

Domestic Violence Protection Orders may also be available. Ch. [26.50 RCW](#).

O. What does a Guardian ad Litem (GAL) do?

The judge may appoint a GAL to represent the child's best interest during the case. A party can request the appointment, or the judge can decide to appoint a GAL on their own.

The GAL can be a private GAL (whose expenses the parties usually pay), or a Court Appointed Special Advocate (CASA) volunteer. The judge might ask for an investigation by the Family Court Services staff (sliding scale payment).

The GAL interviews the parties, reviews the court file, talks to witnesses, and gets records. They can ask for evaluations. They will usually make a report to the court recommending what they believe is in the child's best interest. [How to Work with GALs and Parenting Evaluators](#) has more info.

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- ❖ **GALs ARE “MANDATED REPORTERS.”** A GAL must report a family to law enforcement or CPS when they believe a child in a family they are investigating has been abused or neglected.
-

Section 7: Temporary Parental Consent Agreements

A. The parent(s) have asked me to care for the child temporarily. I need something to show third parties. We do not want a court order. What can we do?

A “Temporary Parental Consent Agreement” may give you authority to

- Make medical and educational decisions affecting the child.
- Get care and services for them.

It can show that the parent(s) have given you permission to care for the child. With this agreement, schools, doctors, and others may accept your authority to act on the child’s behalf.

A Temporary Parental Consent Agreement is **not a court order**. It does not restrict parental rights. The parent can cancel it at any time. It helps 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 you and the parents want it to last. **It is not a permanent solution.** If you are going to care for the child for more than a year, you should seek non-parent custody.

C. When is a Temporary Parental Consent Agreement not enough?

It does not stop 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 court custody order.

-
- ❖ Some third parties such as schools, doctors, insurance companies, or government agencies may not honor a Temporary Parental Consent Agreement.
-

D. What does a Temporary Parental Consent Agreement say?

The adults involved decide exactly what it says. It should say:

- The parent(s) consent to you having temporary residential care of the child, either for a specific period (**example:** “from May 1, 2005 until the end of the school year”), or, where the end date is uncertain, “indefinitely.”

❖ An “indefinite” agreement 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. You cannot renew it unless the parent will do so at the time you need the parent to renew.

- You have authority to provide all needed care, make medical, dental, and educational decisions, and arrange for childcare. You can be as specific or general as you all wish. **Example:** the parent authorizes you to make most medical decisions, but the parent decides if the child needs surgery.
- The parent can revoke (cancel) the agreement at any time. **The agreement should require the parents to revoke the agreement in writing.** Then it will be clear when the parent(s) wants to take the child back permanently, and not just for a short time. 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 follow this procedure voluntarily.
- The agreement can include statements about visitation and and/or child support payments.

E. The Temporary Parental Consent Agreement has not expired. What if the parent wants the child back now anyway?

No matter what the agreement says, the parent(s) can ask for the child back at any time. Then you must return the child, unless you have a court order allowing you to keep them.

F. Should both parents sign the Temporary Parental Consent Agreement?

Yes. If one parent is absent or unknown, your agreement should say so. Then only the other parent has to sign.

G. I am a parent. Should I sign a Temporary Parental Consent Agreement?

Yes, if you have decided another person (such as a grandparent) should temporarily care for your child, AND you have confidence that person will properly care for them. 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 court case
- if you have any concerns about the care your child will get

- if you have any doubts that the custodian will return the child to you at the end of the agreement (or earlier)

You may have to pay child support, even when the agreement does not call for it, if the non-parent gets public assistance for the child or applies for child support services from DCS (the Child Support Division of the Washington State Department of Social and Health Services).

You can cancel the agreement, but the non-parent can file a custody petition. Law enforcement officials may not help return the child to you if you revoke (cancel) the agreement.

H. Can we write our own Temporary Parental Consent Agreement?

Yes. You do not need a lawyer.

For more info 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 do not need to have your agreement signed in front of a notary public, but it is a good idea. Third parties may be more likely to accept a notarized agreement. You can find a Notary Public at a bank or at public office. If you cannot do a notarized agreement, a handwritten letter signed by the child's parent is better than nothing.

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

If you can afford it, have a lawyer who handles family law issues write your agreement or review what you have drafted. A lawyer can help you think about all the issues and write an agreement that 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 an adult's consent to get their child medical care, the law allows a medical provider to accept the consent for most types of medical treatment from adults in this 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 them authority to make health care decisions for the child
5. a competent adult who represents that they are 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 they are a relative responsible for the child's health care. The declaration is good for up to six months. [RCW 7.70.065](#). The medical provider may ask the relative for reasonable evidence of the relationship and their responsibility for the child's health care. [A Kinship Caregiver's Guide to Consenting to Health Care](#), available at www.washingtonlawhelp.org, has more info and a sample declaration form.

Section 8: Instructions for Temporary Parental Consent Agreement

Use the following sample form as is or change it to fit your situation. Try to have a family law attorney review it before you sign it.

You can put in each section of the form:

- Names of parent(s) signing the consent.
- Children's name(s) and birth date(s).
- Name/s 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.
- Any restrictions on decision-making. The parent signing the consent must be available to make decisions in the restricted area. If they are not available when the decision in the restricted area needs to be made, there may be no one who can decide.
- When you will allow out-of-state travel OR "Out-of-state travel is not allowed."
- An end-date or end-condition for the agreement (**example:** "until mother is discharged from the military service" or "until June 15, 2018"). If you do not know how long the agreement will last, put "indefinite."
- If you know both parents' identities, and can find both of them, they must both consent. If only one parent is signing, they must explain why the other parent has not signed.
- Any other agreed items, such as specific address and phone info, an agreement to provide notice of changes, a specific visitation schedule, activities and events the caregiver would notify the parent of, and so on.

Once you have drafted the form, the parents should sign it. Have a Notary Public witness the signatures, if you can. Third parties may be more likely to honor a notarized agreement. Notary Publics may be available at banks or public offices. They may charge a small fee.

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 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 authorize this caregiver to have 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 these restrictions: _____

_____. I/We authorize the above-named caregiver(s) to make decisions on all other issues regarding the child [religious decisions, decisions about the child's social life, decisions about the child's school activities, and personal care decisions (haircuts, pierced ears, and so on.)) with these restrictions: _____

_____.
4. I/We authorize this caregiver to take the child out of state for vacations under these conditions: _____
_____.
5. This agreement lasts until _____ [put an end date or "indefinitely"], unless I/we revoke it before it expires. Either parent can revoke this consent and end this agreement at any time by delivering to the caregiver a signed, written notice at least a week in advance.
6. (This paragraph applies if only one parent is available to consent) [] I am the child's sole custodian. The other parent has not signed this consent because _____

_____ [explain whether the other parent is unknown or absent].

7. Other:

Parent 1 of Child(ren)

Parent 2 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: _____