



## Third-Party Custody

### Understanding Custody and Third-Party Custody

**Legal custody** means you have the right to make major decisions for the child. These are decisions like medical care, religion, and where they go to school.

**Physical custody** means living with the child and taking care of the child's daily needs.

In Minnesota, if parents are not married when the child is conceived or born, the mother has sole legal and sole physical custody until a court decides otherwise. An unmarried father has to establish paternity before he has the legal right to ask for legal or physical custody of a child. For more information see our fact sheet [Paternity and Child Custody](#).



Married couples share joint legal and joint physical custody of a child born to them. They don't need a court order.

**Third-party custody** is when a court gives legal and physical custody of a child to someone who is not a biological parent. This person is sometimes called the custodian.

### How is third-party custody different from guardianship or adoption?

A legal **guardianship** can be created for different reasons. It could be because:

- the parental rights of both parents are terminated
- the parental rights of the only living parent are terminated
- both parents are dead
- a parent needs guardianship of their own child who is turning 18 but has a severe disability

If the child is **adopted**, then the caregiver becomes the legal parent of the child. With adoption, the biological parents' rights are terminated.

A parent's rights are not taken away in a third-party custody proceeding. Even if someone gets third-party custody, parents may be allowed parenting time and may have to pay child support.

Even if someone gets third-party custody, the child is still the parents' child for purposes of inheritance and social security.

## How is third-party custody different from a Delegation of Parental Authority (DOPA)?

A DOPA is created by a parent when they want someone else to care for their child temporarily. A DOPA is not filed with the court. A parent can stop a DOPA at any time. See our fact sheet [Delegation of Parental Authority \(DOPA\)](#).

Third-party Custody is started by someone other than a parent when that person wants to care for the child permanently. Only a court can grant someone third-party custody.

## Why would I want third-party custody?

If you take care of a child in your home, getting third-party custody gives you:

- the right to get medical care, enroll the child in school, and give the child a safe, stable, and permanent home
- clear, enforceable guidelines about things like where the child is going to live and what sort of parenting time the parents may have
- security that the parent(s) can't take the child suddenly, disrupting school, other activities, and the child's sense of stability
- the possibility of child support from the parent(s) and
- the ability to protect the child's physical and emotional health if the parents can't provide a stable, healthy environment for the child



## Going to Court

If you want to ask for custody of someone else's child, you have to show that you have "standing." A court only looks at requests for third-party custody if someone has "standing." This means you have to show that you are a **de facto custodian** or an **interested third-party**.

## Am I a de facto custodian?

You are a de facto custodian if you can show by clear and convincing evidence that:

- You have been the child's primary caretaker
- The child's parents are not involved in caring for the child and
- In the last 2 years before filing your Petition, the child lived with you without their parents present, for:
  - At least 6 months if the child is less than 3 years old or
  - At least 1 year if the child is 3 years old or older.

**For example:** Your grandson is 2 years old. Your daughter asked you to take care of him while she gets back on her feet. He has now lived with you for over 6 months. Your daughter does not live with you, but she comes to visit every few months for a few hours. You found a daycare, you take him to doctor's appointments and make sure he is fed, clothed, and has a stable home to live in. Your daughter does not pay for his needs, did not help find a daycare, and does not take him to the doctor. **You are a de facto custodian.**



**For example:** Your nephew and his 4-year-old daughter have lived with you for 2 years. You take care of his daughter during the day while he works. He is home most nights after work to spend time with his daughter and put her to bed. But you think he should spend more time with her on weekends when he is not working. He does not pay rent but does buy groceries for the household and pays for all of his daughter's clothes, toys, and activities. **You are not a de facto custodian.**

Along with showing that you are a de facto custodian, you also have to show the court that it is in the "best interests of the child" for you to have custody. (see below)

### **Am I an interested third-party?**

You are an interested third-party if you can show by clear and convincing evidence that you have a significant relationship with the child and that 1 of these things is true:

- The parent has abandoned the child, or has neglected the child's well-being to the point where it is harmful for the child to live with the parent
- The child is in physical or emotional danger, so putting the child with you takes priority over preserving the day-to-day parent-child relationship or
- Other extraordinary circumstances exist.

Along with showing that you are an interested third-party, you also have to show the court that it is in the "best interests of the child" for you to have custody. You also have to show that you haven't been convicted of certain crimes. Some examples of these crimes are murder, kidnapping, assault, malicious punishment of a child, and neglect of a child.

### **In third-party custody cases, how does the court decide what is in the best interests of the child?**

The court looks at these things to decide what is in the best interests of the child:

1. What do the people involved want as far as custody?
2. What does the child want? (if the court feels the child is old enough to "express reasonable preference")

3. Who is the child's primary caretaker?
4. How close is the relationship between each adult and the child?
5. The interaction of the child with a party or parties, siblings, and any other person who may significantly affect the child's best interests
6. The child's adjustment to home, school, and community
7. How long has the child lived in a stable, satisfactory environment and what is the benefit of maintaining that?
8. How strong is the family unit of the current or proposed custodial home?
9. The mental and physical health of everyone involved
10. Can the parties give the child love, affection, and guidance?  
Can they keep educating and raising the child in the child's culture and religion, if important?
11. What is the child's cultural background?
12. What is the effect of an abuser's actions on the child, if domestic abuse happened between the parents or the parties?

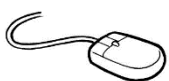


The court can't use just one factor to decide third-party custody. They must look at and review each of the factors and explain how they decided what is in the best interests of the child.

### **How is the court process started?**

If you can show you are either a de facto custodian or an interested third-party, you can bring a court action. First, you have to file a Petition for Third-Party Custody in family court in the county where the child lives or where there is a past custody or divorce case involving the child. If a custody case is already pending, you can ask the court's permission to intervene in (be a part of) that case.

You can get [the forms you need](http://www.mncourts.gov) at [www.mncourts.gov](http://www.mncourts.gov)



- Click on "Get Forms"
- Click on "Child Custody / Parenting Time"
- Scroll down to "Establishing Third-party Custody of Someone Else's Child Forms."  
If you are not sure what forms you need, it is best to choose the [PACKET] and read all instructions carefully.

You can also get the forms at a court Self-Help Center or a law library near you. There may be a cost to get these forms.

## What happens after I file the petition with the court?

The petition, along with a summons, must be **served** personally on the child's parents, guardian or legal custodian. But you can't be the one to personally hand the documents to the parents. If you don't know where the parents are, the court may let you serve the papers in a different way. You have to ask the court for permission to do that.

Once the parents are served, they can either ignore the case, fight the case, or support your petition.

If the parents want to fight the case, they have 21 days to file an Answer from the date they got the summons and petition. An Answer is a formal written response filed with the court. The parents must also serve the Answer on the Petitioner(s).

## What happens if the parents do not file an Answer?

If the parents choose to ignore your petition, and don't file an Answer, a default order could be issued. A default order is a final decision that is made by a court when someone does not appear in court.

Even though the other party has not responded, you still have to go to court. You need to show your evidence that you are either a de facto custodian or an interested third-party. And you need to show that it is in the child's best interest that the court award you custody.

## What happens if the parents want to fight the petition?

If the parents want to fight your custody petition, several hearings may be held to decide if you are a de facto custodian or an interested third-party. The court also decides if it is in the child's best interests to be with you. Every county has its own process for deciding custody matters.

**First Hearing:** Generally, at the first hearing, the court decides if there is enough information in your petition for the case to move forward. In order to move forward, the court needs to make a "prima facie finding." That means the court reviews your petition and any documents you filed with your petition. They are looking to make sure you have enough to meet the requirements set by law about third-party custody.



**For example:** Your petition has general statements saying it is dangerous for the child to live with their parents, but you don't give any specific examples. The court will probably dismiss your petition.

If the court decides that your petition has enough information to go forward with a case, they may issue temporary orders for custody, parenting time, or child support. The court may also order the parties to take part in some form of mediation.



**Mediation:** Mediation is always a good way to try and solve a custody dispute. A mediator is professionally trained and does not take sides in a case. The mediator helps the parties come together and work on a solution. It can be a hard process, but it's in a child's best interests if everyone can work together to create a safe and stable home for the child.

After mediation, the court usually schedules a review hearing to see if any agreement has been or can be reached. If the parties can't agree, the court schedules the case for an evidentiary hearing, also known as a trial.

**Trial:** At the trial, you now have to **prove** that you are either a de facto custodian or an interested third-party. You have to **prove** that it is in the child's best interest for you to have custody. You showed you had standing before, now you have to have good evidence to prove it. At trial, parties need to present evidence to support their case for custody. Examples of evidence can be school records, medical records, pictures, **or text messages. They need to show that the information** you put in your petition is true.

### **What if the parents want to give me custody?**

If the parents agree to give you third-party custody you still need to go to court. File and serve the petition as explained above and wait for a court date. At the hearing, you and the parents tell the court about your custody agreement. The court decides if your agreement is in the best interests of the child. If the court decides everything is ok, it approves the custody arrangement. This is sometimes called a custody consent decree.

The court order gives you legal and physical custody of the child. The order must state that you can decide things like medical care, religious upbringing, where the child lives and goes to school. It also states that you can get information and public services for the child as if you are the parent.

The court order must also say if the third-party custody is temporary or permanent and give information about child support and parenting time.

### **What do I do if it is an emergency situation?**

Often, parents are fine letting caregivers take care of their children, as long as you don't take any legal action. This can change once they are served with your summons and petition for third-party custody. They may get angry and come to take the child away. You can't stop the parents from taking the child unless you have an emergency temporary order for custody.



If you are afraid the parents may come to get the child, and that it could be dangerous, ask about getting an emergency temporary order of custody at the same time you file the petition for third-party custody. This is also called an “ex parte” action. The process to get one can be different in different counties so talk to your Self-Help Center or Court Administration for information.

### **Can I get public assistance for the child?**

If you have legal and physical custody of the child, that child is seen as your dependent. You can claim them as a dependent for public assistance applications. If you are getting benefits already, report the custody of the child and your benefits could go up.

There may be other benefits you can get. Check with your worker.

### **How long does third-party custody last?**

An order granting a third-party custody is permanent. However, parties can ask the court to change the custody order after it has been in effect for a year, and they meet certain requirements. It’s called a custody modification. But getting the court to change custody is not easy. The process for doing a third-party custody modification is the same as custody modifications between biological parents.

See our fact sheet [Paternity and Child Custody](#). (see *Can custody be changed?*)

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