



Grandparents Raising Grandchildren: Rights and Responsibilities

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Most of us eventually become grandparents (94%) at some point in our lives (Hooyman & Kiyak, 1996). Throughout history, grandparents and other relatives have raised grandchildren, but more grandparents (and other kin) are caring for them than ever before. The idealized picture of the two-parent family may not reflect families of today.

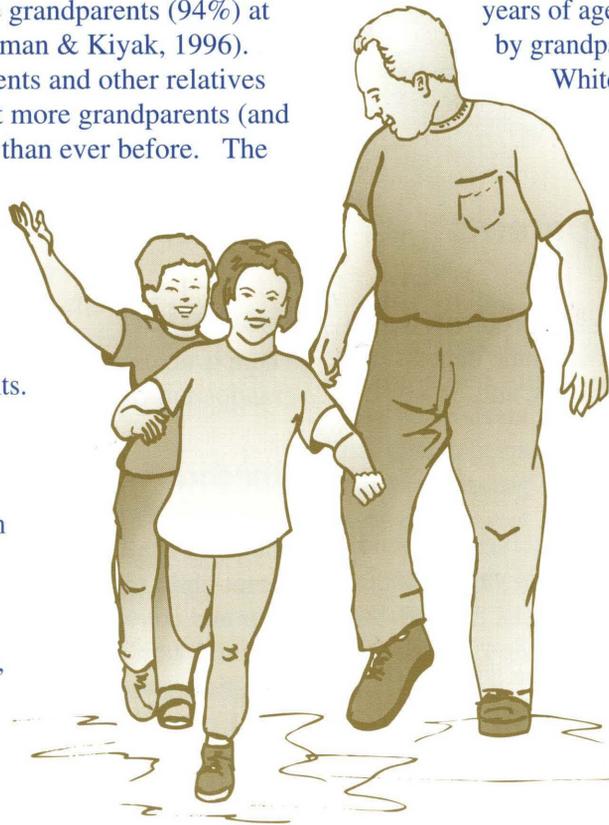
From 1980 to 1990 there was a 44% increase in the number of children living with grandparents. Nearly five and a half (5.4) million, or just under 8% of all children, live with their grandparents. Over 1/3 of them are being raised solely by a grandparent. Five percent of Virginia's households have families providing kinship care, a 16.5% increase from 1980.

The Grandparents

According to the U.S. Bureau of the Census, 33% of grandparents raising grandchildren (GRG) are below age 50, 48% are between the ages of 50-64, and 19% are aged 65 or older. Three-fourths (3/4) of GRGs are married, and 93% are female (Chalfie, 1994).

The Grandchildren

Fifty-two percent (52%) of children living in a grandparent's home are less than 6 years of age, 30% are between the ages of 6 and 11, and 18% are between 12-17



years of age. Over half of all children raised by grandparents live in the south. More White children live in grandparent

headed households (2.2 million) than African Americans (1.2 million) or Hispanics (0.6 million). Looking at children who live with grandparents, 4.1% are White, 13.5% are Black, and 6.5% are Hispanic.

Reasons Grandparents Raise Grandchildren

- To provide a home-like experience.
- To influence grandchildren's personal and cultural identity.
- To prevent placement in a foster home.
- To buffer effects of divorce or single-parenthood.
- To care for children with parents who are incarcerated or have contracted HIV or other illnesses.
- To reduce contact with substance-abusing parents.
- To reduce financial and emotional overloads of their own children or to help in transitional situations such as a parent sent overseas to work.
- To serve as a buffer for children at risk of family crises, including physical, psychological, and sexual abuse or neglect.

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Rewards of Grandparents Raising Grandchildren

- Satisfaction and accomplishment (e.g., academic achievement, athletic awards, school plays and activities, summer employment, or religious endeavors).
- Preservation of family history and values.
- Maintenance of relationship through visits, telephone calls, family dinners and gatherings, and recreational activities.
- Resolution of conflicts between parents and grandchildren.
- Contributions that include childcare, money, household work assistance, and aid in times of crises.
- Positive developmental outcomes, such as improved school behavior and social skills.
- Love and affection.

Challenges for Grandparents

Health

Some grandparents experience health problems due to caregiving demands. Health risks include depression, insomnia, back and stomach problems, and hypertension.

Social Isolation

Grandparents have little time to themselves, to spend with family or friends, and to partake in church or community activities.

Some grandparents feel guilt and shame because of their children who may be in jail or drug addicted.

Finances

Grandparents may quit their jobs, cut back on hours, or make other financial sacrifices. According to Minkler and Roe (1993), 30% of grandparents left jobs to care for their grandchildren. Most women caregivers had low-income jobs without retirement or other benefits; few had any savings to buffer the effect of lost wages.

Issues of Grandparenting in Virginia

Although many issues of GRG are common, states treat grandparents' rights differently. This section deals with Virginia courts and grandparents who seek visitation, custody, or adoption. A circuit or district court judge hears all the facts of a case and makes a decision.

Finding out which court has proper jurisdiction is often very confusing. If you seek legal intervention, go to an

attorney or to the intake officer (in Virginia) of the Juvenile and Domestic Relations District Court closest to you or to where the child currently lives to learn where to file.

The court considers that a child 14 years of age or older has reached the age of discretion. In custody/visitation cases, this means that the court gives the opinions and wishes of the child a great deal of weight. In adoption cases, a child 14 and older must actually consent to the adoption.



Visitation

There is no common law right of visitation for grandparents in Virginia.

Standard for grandparents and others who seek visitation:

The court shall give due regard to the primacy of the parent-child relationship, but may upon showing by clear and convincing evidence that the best interests of the child would be served thereby award custody or visitation to any other person with a legitimate interest [VA Code § 20-124.2(B)].

Person with a legitimate interest, VA §20-124.1 "includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members." The ability of grandparents to have a court-ordered visitation with a grandchild varies depending on whether both parents or one parent objects to the visitation.

Standard if the grandparents seek visitation with a grandchild living in an intact family and the parents object:

The state can interfere with the right of parents to raise their children by allowing a court, to show, by clear and convincing evidence, that the best interests of the child are served, "to order non-parent visitation." The Code specifies that the court gives due regard to the importance of the parent-child relationship [VA Code §20-124.2(B)].

Before visitation can be ordered over the objection of the child's parents, the court must find that it is not only in the best interest of the child, but also that there is an actual harm to the child's health or welfare without visitation. The intent is that the court would deny visitation if it is not in the best interest of the child.

Helpful court case: *Williams v. Williams*, 24 Va. App. 778, 485 S.E.2d.651 (1997) and 256 Va. 19 S.E.2d. 417 (1998). The case was heard in Montgomery County in Southwestern Virginia.

Standard if only one parent objects to the visitation:

When only one parent objects, and the other parent requests the visitation, the trial court does not have to follow the standard of *Williams v. Williams* (1997). The only requirement is that the court find that the visitation is not in the best interest of the child.

Custody

Custody is not permanent. It continues legal ties of biological parents and relatives; the person with custody holds parental rights.

A child's natural and legal right to the care and support of a parent and the parent's right to the custody and companionship of the child should only be changed if there are compelling reasons to do so *Bailes v. Sours* (1986). For a third party (even a grandparent) to be awarded custody of a child instead of the natural parent, the parent must be proved unfit by clear and convincing evidence.

Even if the parent's level of care is marginally satisfactory, the court is unlikely to take custody away just because a third party might be willing and able to provide better care for the child.

Helpful court case: *Dotson v. Hylton*, 29 Va. App. 635, 513 S.E.2d. 901 (1997). The case was decided in Tazewell County in Southwestern Virginia.

Adoption

Adoption is permanent. The biological parents lose all legal rights and obligations to the child. The biological relatives such as grandparents, stepparents, former

stepparents, and cousins lose all legal rights to the adopted child also (VA Code § 63.1-233).



"No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be signed and acknowledged before an officer authorized by law to take acknowledgements" [VA Code § 63.1-225(A)].

If the court finds that the consent of any required person or agency is withheld contrary to the best interests of the child, or consent cannot be obtained, the court can grant the petition without the consent.

When granting adoption, the court must consider the relationship between the child and proposed adoptive parent as well as the parent who does not consent to the adoption. The court must find that the adoption will serve the child's best interest and that a continuing relationship with the non-consenting biological parent is harmful to the child.

Helpful court case: *Winfield v. Urquhart*, 25 Va. App. 688, 492 S.E.2d. 464 (1997). The case was decided in Dinwiddie County in South-Central Virginia.

Something to Consider

Financial and Emotional Strain

Caregiving includes emotional and monetary responsibilities. Grandparents must consider financial costs attached to pursuing a case. Financial strain may be greater for grandparents who have fixed incomes or who are at risk of poverty (NCPSSM, 1997).

Court costs vary with the complexity of the case.

Resources:

Adoption Assistance

Provides financial assistance for the adoption of children with special needs. **Contact:** Local Department of Social Services or other agencies.

Birth Certificate

Contact: The Division of Vital Records - State Health Department, P. O. Box 1000, Richmond, VA 23208-1000.

Child Support

If the grandparent has custody, he or she may petition the court for the parents to pay child support, unless the grandparent receives welfare benefits.

Contact: The Division of Child Support Enforcement, P.O. Box 570, Richmond, Virginia 23218-0570

Foster Care Payments

Provides financial assistance for children whose legal parent is the state.

Contact: Local Department of Social Services.

Medicaid Assistance

Provides financial assistance for children whose legal parent is the state.

Contact: Department of Medical Assistance Services.

Supplementary Security Income

This financial assistance program is based on family income.

Contact: Local Social Security Office.

Temporary Assistance to Needy Families (TANF) and Food Stamps

Virginia grandparents must have legal custody of their grandchild in order to apply for TANF.

Contact: Local Department of Social Services.

Women, Infants, and Children (WIC)

This program provides food assistance and nutritional screening to low-income children up to five years of age.

Contact: Local Health Department.

Social Support

Groups that provide support and information to grandparents and other kin raising grandchildren.

Contact: Local Office of Virginia Cooperative Extension.

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