

Non-Parent Custody: Frequently Asked Questions and Answers

Should I read this?

Yes, to find out when and how under Washington law someone can get legal custody of a child who is not theirs.

❖ **Under a new state law**, starting in 2021 a nonparent can ask for **legal guardianship** instead of a nonparent custody order. Nonparent custody orders already in effect will still be valid in 2021. The new guardianship law will repeal (replace) the nonparent custody law.

Who should not read this?

This does not cover

- The new guardianship law that takes effect in 2021
- “De facto” parents
- Other ways a non-parent can get custody (**example**: juvenile court)
- Non-parent looking for visits with a child. Read [Washington’s New Non-Parent Visitation Rights](#) available at WashingtonLawHelp.org.

Part 1. General Info

What is a non-parent custody petition?

Someone who is not the parent files a court case asking for legal custody of a child. The person filing the case is the Petitioner.

What do I have to prove to win?

A parent who believes they should keep custody can object to the case. If this happens, you must prove one of these:

- The parent is unfit.
- Letting the child live with a fit parent would negatively affect the child's growth and development.

Example 1: A parent is living with a physically abusive person. You must show that this causes the child actual harm. It is not enough that a different custody arrangement is in the child's "best interest."

Example 2: The mother has shown instability while raising the child. She moved to Alaska to get away from a problem. She has moved from place to place in Alaska. She does not have a definite plan for the present. These things alone do not meet the legal standard for awarding you custody. You would have to show actual harm to the child from these or other factors.

❖ The court applies an even tougher standard in cases involving Indian children.
(See section 6 below.)

What is the state law about non-parent custody?

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

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\(1\)](#).

Do I have to sue both parents?

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

- 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\(2\)](#))

What do I get if I win?

The judge will award you permanent legal custody. The judge does this by entering a **Final Non-Parent Custody Order**. This Order gives 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 let the parents have some part in decision-making.

I 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. Should I file for nonparent custody?

You can use a “Temporary Parental Consent Agreement” instead. Use our [Temporary Parental Consent Agreement](#) packet, available at [WashingtonLawHelp.org](#).

Part 2. Jurisdiction (Authority to Decide the Case)

Can I file this case in a Washington court?

Yes, if Washington has **jurisdiction** 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 this.

If the child has always lived in Washington and no other state or tribal court has entered a custody order about them, Washington has jurisdiction. [RCW 26.27.041](#). If not, it gets more complicated. Read [Which Court Can Enter Custody Orders? Questions and Answers about Jurisdiction](#), available at [WashingtonLawHelp.org](#), and talk with a lawyer.

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 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.

Read [Which Court Can Enter Custody Orders? Questions and Answers about Jurisdiction](#).

There is an emergency. I need to file in a Washington court. Is that possible?

Maybe. 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\(1\)](#). **This is limited.** A court order in this situation usually lasts only until someone files a case in the state with jurisdiction, unless that state declines jurisdiction. Read [Which Court Can Enter Custody Orders? Questions and Answers about Jurisdiction](#).

What county should I file in? (What is the proper venue?)

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

Part 3. Indian Children

Who is an Indian child?

The ICWA ([Indian Child Welfare Act, 25 USC §1901](#)) defines an Indian child as any unmarried person under age eighteen who is one of these:

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

[25 USC §1903\(4\)](#). Read our [Indian Child Welfare Act](#) publication to learn more.

I am filing for non-parent custody of an Indian child.

STOP HERE. The ICWA applies to your case. You must follow its requirements. Use [File for Non-Parent Custody of an Indian Child in State Court](#) and [Indian Child Welfare Act](#), available at [WashingtonLawHelp.org](#).

Part 4. What if...

What if a parent objects to my nonparent custody petition?

The judge will give you custody only if you can prove one of these:

- The parents are unfit.
- Living with a fit parent would negatively affect the child's growth and development.

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.

What if there is a dependency case?

If anyone 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.

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

You still must try to figure out who it might be, and find and serve them. Even parents who have had no contact with the child still have legal claims to custody and visitation.

The child's father and mother never married. I do not think the father has any legal relationship with the child.

You must name the person you think is the father in the non-parent custody petition and have him served. There are different ways to establish parentage. Read [Parentage and Parenting Plans](#).

If parentage has not been established, you must try to figure out who the father might be and serve the possible father(s) with the Petition. The child's mother might help. If not, there are procedures you may be able to use after you have filed your Petition. The Family Support Division of the Prosecutor's Office might help you.

I cannot find a parent.

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

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

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

If the child is already in your physical custody, the court may allow service of court papers on the parent you do not know or cannot find by mail or publication. [RCW 4.28.100\(5\)](#). Read [Service by Certified Mail or Publication](#).

A parent has never lived with or been to Washington State.

You can still file here **if** Washington has jurisdiction over the child. [RCW 26.27.201\(3\)](#). However, the Washington court may not be able to make a child support order against a parent who has had no contact with Washington.

A parent is in the military.

You may need that parent to agree to let the case go forward OR the judge might have to appoint a lawyer to represent them. [Service Members Civil Relief Act, 50 U.S.C. App., Sec. 501](#) and so on.

Part 5. For parents

I am afraid I will lose the temporary orders hearing in this nonparent custody case filed against me. 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 gives you. Make sure the judge specifically sets out visitation time in the orders.
- Find and use services and 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 you could get the child back (**example:** when you finish alcohol treatment).
- You can file a motion for a new temporary order when your situation is better.

If I lose the nonparent custody case, will I lose all my parental rights?

Not necessarily.

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

- You willfully abandoned the child for a long time or refused to parent the child
- You physically, sexually, or emotionally abused a child
- You have a history of domestic violence or an assault or sexual assault that has caused serious physical harm
- You have a conviction as an adult for certain sex offenses ([RCW 26.10.160](#))
- You live with someone who has engaged in any of those last three

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

Will I have to pay child support if I lose this case?

Yes, if the court has personal jurisdiction over you (if you have had enough contact with this state). How much you must pay depends on your income. If the court lacks jurisdiction to set support, the Division of Child Support (DCS) may set it. Read [How is Child Support Set](#) and [Do You Owe Child Support](#).

Can I get custody back?

Yes. You can file to modify (change) the nonparent custody order if you can show that you fixed the issues that led to the nonparent custody order in the first place. [In re Custody of S.M. and A.M.](#), Ct. App. Div, 1 (2019).

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