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80 New Scotland Avenue
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Gerald Wallace, Esq.

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GRANDPARENT RIGHTS NEWS

Alleged Child Abuse: How to Proceed

By Gerard Wallace

Whether because of parental substance abuse, mental illness, incarceration, or other cause, grandparents and other relatives start caring for children because they share a common concern—the actual or potential abuse or neglect of children. If grandparents have suspicions that their grandchild is abused or neglected by a parent, an elder law attorney should have basic knowledge of the standards for abuse and neglect and the procedures for alleviating the situation. The right response can have long-term effects for the concerned family members and the children's parents. Unfounded intervention can damage family relationships irreparably. On the other hand, appropriate intervention can result in a lifetime of benefit for the child.



A major problem in allegations of abuse or neglect are the sparse statutory definitions. According to the Social Services Law, a *neglected child* is a child less than 18 years of age “whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.” The statute then lists conditions which may result in impairment. These include inadequate food, clothing, shelter, educational and medical care, improper supervision, including “excessive corporal punishment,” loss of parental control due to substance abuse, or “any other acts of a similarly serious nature requiring the aid of the court.”¹ Often, maltreatment of a child does not rise to the level of abuse unless linked to substance abuse, since substance abuse may indicate inability to provide proper parental supervision.

An *abused child* is a child whose parent or legally responsible caregiver “inflicts or allows to be inflicted physical injury which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ,” or involves an act of sexual abuse as defined in the penal law.²

A degree of corporal punishment and verbal abuse are tolerated by law, but marks (bruises, lacerations,

swellings, redness) or conditions that require medical intervention will in all likelihood lead to intervention by Child Protective Services (CPS). As a result, the child welfare department may remove the child from the home or implement a program of rehabilitative services.

If a grandparent suspects neglect or abuse, the grandparent has two choices: 1) to make a report to CPS via the child abuse hot line³ (or, in dire instances, by calling the police department), or 2) to start a private petition for custody based on the allegations of abuse or neglect.

When CPS finds the allegations to be “found,” and takes the child into custody, the preferred placement is with “suitable relatives.”⁴ Unfortunately, child welfare personnel may attempt to place the child with relatives without informing them of the opportunity to become foster parents.⁵ Since foster parents receive a substantial stipend for providing care, a grandparent who wishes to become a foster parent must make arrangements with child welfare *before* taking a child into their home. If they agree to take the child into their home without state agreement that the home may qualify as a foster home, once the child is removed from an abusive home, child welfare departments do not have to grant foster care status to the grandparent.

Any private person can petition for custody. If certain “extraordinary circumstances” such as abuse or neglect are found,⁶ then the custodial issue is decided using a best interest of the child standard. Such disputes involve enormous invasion of family privacy and invariably exacerbate family discord. Grandparents who do not want to risk the placement of their grandchild in a stranger’s foster home may want to consider this option.

Endnotes

1. N.Y. Soc. Serv. L. § 371(4-a).
2. N.Y. Soc. Serv. L. § 371(4-b).
3. Attorneys are not mandated reporters. N.Y. Soc. Serv. L. § 413-19. Mandated Reporter Hot Line 800-635-1522; Public Hot Line 800-342-3720; Public Information 518-473-7432.
4. N.Y. Fam. Ct. Act § 1017.
5. New York State Office of the Comptroller, Division of Management Audit, *Department of Social Services Kinship Care Report 95-S-106* (Nov. 1996).
6. *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976).

Gerard Wallace is the Director of the Grandparent Caregiver Law Center at the Brookdale Center on Aging of Hunter College in New York City. He is a member of the New York City KinCare Task Force, the New York State Bar Elder and Family Law Sections and the Advisory Council to Catholic Charities Grandparent Caregiver Program in Albany and Generations United in Washington, D.C. He graduated from Albany Law School in 1997 where, as a Sandman fellow, he published a monograph on the legal issues of grandparent caregivers. In private practice, he continued to concentrate on this issue.