

CHILDREN AND MILITARY BENEFITS



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

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INTRODUCTION

The military strives to support non-traditional family arrangements by providing benefits to guardians with intent to maintain permanent custody of a child, while providing partial benefits to foster parents. There are no benefits for children who are staying with military members for the convenience of the child's parents.

CUSTODIANS

A custodian is a person to whom a parent or guardian has temporarily transferred care, custody, and control of their minor child. Alaska allows a parent or guardian to delegate to another person any powers regarding the care, custody or property of their minor child, except the power to consent to the marriage or adoption of the child. The delegation must be made by a properly executed special power of attorney (POA) and may be for any period up to one year.

A service member who is custodian for a minor child through a POA does not receive any military benefits from the custodianship, and the child does not gain military benefits. A person may also become the custodian of a child through a state agency, i.e., a foster parent. The minor child under the care of the foster parent gains limited privileges, including BX and Commissary privileges, but not medical benefits.

REQUIREMENTS FOR A CHILD CARE POA (LOCO PARENTIS)

The person making the POA is called the "principal," while the person named in the POA to act on behalf of the principal is called the "attorney-in-fact," or "agent." Alaska law does not establish any particular requirements for a

POA other than it must reasonably cause the attorney-in-fact to believe that the principal wants the attorney-in-fact to act for the principal. Most POAs are in writing, signed and dated by the principal and acknowledged before a notary public. A third party, such as the principal's bank, may, but is usually not required, to accept the POA as proof of the attorney-in-fact's authority to act for the principal. An exception is a statutory POA, which is one that uses substantially the same words and form as set forth in AS § 13.26.332. Third parties who fail to honor a properly executed statutory POA may be liable for a civil penalty, plus damages, costs and fees associated with the failure to comply with the statutory POA.

GUARDIANSHIP

A guardian is a person, other than the natural parent of a child, who has the right and obligation to provide for the care of a child or of an adult who has been determined to be incapable of handling his/her own affairs. The person for whom the guardian is responsible is the "ward." The guardian is responsible for managing the ward's financial affairs, unless a court has appointed a conservator.

Under Alaska law there may be a full or partial guardian. A full guardian has the same powers and duties concerning his/her ward that a parent has concerning his/her minor child, but not all the liabilities. A guardian is not liable for the necessities of life for the ward (food, shelter, clothing, etc.) and is not liable for acts of the ward. A partial guardian has only the powers and duties concerning the ward that have been specifically granted to him/her by a court order.

A guardian is either appointed by a court or by the parent of an unmarried minor child in the parent's will. If appointed by a court, a hearing must be held prior to the appointment at which the ward has the right to be present, be represented by an attorney, present evidence, remain silent and cross examine witnesses. If the guardian is appointed by a will, known as a testamentary appointment, the appointment becomes effective when the guardian files an acceptance of the guardianship with the court. Both of the minor's parents must be dead or determined incapacitated by a court before the guardian can validly accept a testamentary appointment. If the minor is 14 years or older, the minor may file a written objection to the appointment after which the court must then hold a hearing to appoint the testamentary nominee or any other suitable person. A guardian is required to make periodic reports to the court.

The military may give benefits to the ward. If the guardianship is for less than a year, the child will gain BX and Commissary privileges, but not medical benefits. Guardianships of longer than a year allow the child to receive medical benefits as well.

ADOPTION

Adoption creates a parent-child relationship between the adoptive parent and the adopted child for all purposes including inheritance. Adoption relieves natural parents of parental rights and all future responsibilities and terminates all legal relationships. Adoption of a child will terminate a natural parent's obligation to pay future child support for the adopted child, but does not have any effect on any past due child support. Adopted children of

servicemembers are entitled to the same benefits as natural born children.

For more information on adoption, please see the 354 FW/JA Legal Assistance and Preventative Law pamphlet on Adoption.

CONCLUSION

Whether or not a child receives benefits depends primarily on the length and permanence of the relationship established between the caretakers and the child. The military will give benefits in cases involving the permanent change of custody, but will only provide limited benefits for temporary custody.

This pamphlet is for basic information on children and military benefits as it relates to military personnel stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.

