

CHILDREN AND MILITARY BENEFITS



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

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Legal Assistance and Preventive
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INTRODUCTION

The military strives to support non-traditional family arrangements by providing benefits to guardians who intend to maintain permanent custody of a child, while providing partial benefits to foster parents. Generally, 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 POWER OF ATTORNEY (LOCO PARENTIS)

The person making the Power of Attorney 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." Under

Alaska law, a parent or guardian may choose to delegate his or her parental rights to another person for up to one year. This is often called a Delegation of Powers by Parent or Guardian. The delegation can be revoked by the parents or guardians at any time for any reason. A sample *Delegation of Powers by Parent or Guardian* form is available at <http://courts.alaska.gov/shc/family/shcpoa.htm>. You do not file delegation with the court, instead you provide it to the person to whom you are delegating powers and keep a copy for yourself.

GUARDIANSHIP

A guardian is a legal relationship where the court appoints a person or institution as a guardian to make decisions for an incapacitated person or a minor child. Guardians commonly make decisions regarding housing, medical care, legal issues, and services. The individual being cared for is called the "ward."

Under Alaska law there are four different types of guardianships:

- A full guardian is appointed to have total decision making responsibilities for the ward regarding medical, housing, services, legal, and financial areas.
- A temporary guardian is appointed to have authority to provide emergency services necessary to protect the ward from serious injury, illness or disease for an immediate or limited period of time.
- A partial or limited guardian generally has less rights, powers, and duties than a full guardian. The rights, powers, and duties of a partial or limited guardian are specified by court order. A testamentary guardian is appointed by a will.

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, 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. Depending on the length of the guardianship, the ward may be eligible for medical, BX, and commissary benefits.

ADOPTION

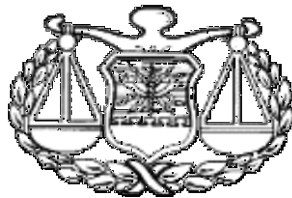
Adoption creates a parent-child relationship between the adoptive parent and the adopted child for all purposes including inheritance. Adopted children are entitled to the same benefits as natural born children.

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 provides 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.

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