

Children Safety Planning Frequently Asked Questions

This is general legal information and cannot take the place of individual legal advice.

Consent:

1. What is a temporary parental consent agreement?

It gives temporary permission to a trusted caregiver to make decisions for the children like obtaining medical and dental care or enrolling a child in school. It may also grant permission to travel across international borders with the children.

A temporary parental consent agreement is not a custody order. It does not resolve custody disputes between separated parents.

A temporary parental consent agreement does not affect the rights of a parent. The parents still have custody and control of the children, and they may revoke the agreement at any time.

2. When is a temporary parental consent agreement not appropriate?

A temporary custody agreement does not resolve disputed custody cases between parents.

3. How should I choose a caregiver for a temporary parental consent agreement?

A caregiver should be someone you trust and who is able to take care of the children. The caregiver will be responsible for the children's well-being. The caregiver should understand how to help the children with things that are important to you, like getting an education and appropriate medical care. The caregiver should be willing to follow your wishes and keep you informed about your children. The caregiver is preferably someone who is in the United States legally and is not going to be deported. You should talk to your proposed caregiver to make sure he or she is willing to take on the responsibility.

The caregiver must be at least 18 years old.

4. Can my DACA child over the age of 18 be the legal custodian of my other United States born children?

You may leave your children with your adult children who are older than 18 years. However, there may be a risk to the children if the DACA child is deported and the children have no other caregivers.

5. What if I don't know anybody who is documented that could take care of my children?

You can ask an undocumented person to be the caregiver but you need to be aware of the risk of deportation. If your caregiver is deported, your children may be left without a caregiver. Your children may become dependents of the State of Washington and live in foster care.

6. Should I tell my children about the temporary parental consent agreement?

You should explain your plans as age appropriate. The children should know who will care for them if you become unavailable. You may consider putting a copy of your temporary parental consent agreement in your child's school bag and explain to your child to show the document to a trusted adult if you become unavailable.

7. Does a temporary parental consent agreement require both parents' signatures?

Yes, if both parents are available. If only one parent is available because the other parent died or his/her whereabouts are unknown, one parent can sign but should include an explanation why the other parent is not available. If possible, provide proof (such as a death certificate).

8. Is the temporary parental consent agreement valid if only one parent signs it?

It may be valid for schools, medical and dental care if only one parent signs it and has a child custody order. If the other parent wants custody and files a court case, the temporary parental consent agreement will likely not be enforceable against a biological parent.

If only one parent signs a temporary consent agreement, it may not be adequate for international travel or to obtain a passport for the children. See below for exceptions.

9. If I have a child custody order placing the children with me, can I sign a temporary parental consent?

Yes, you may sign a temporary parental consent agreement. Make sure that you attach a copy of the court order granting you legal custody of the children to the temporary parenting consent agreement. However, it is likely that a temporary parenting consent agreement would not be enforced against a biological parent trying to get custody of the children.

10. Does the temporary parental consent agreement need to be notarized?

No. But permission to travel and permission to obtain a passport must be notarized.

11. Can I revoke the temporary parental consent agreement?

Yes, you can revoke the temporary parental consent agreement at any time. You need to write to the caregiver and inform him/her that you are revoking the temporary parental consent agreement. The notice of revocation must be mailed and you should keep a copy of the notice for your records. If you want to designate a new caregiver, you should complete a new document.

Custody:

12. Do I need a court order to give permission for someone else to care for my children?

No, a court order is not required to give permission to a person to care for your children. However, if one parent is not available to care for the children, the law assumes the other parent is available. A court order is necessary to place children with a non-parent, if one parent is available and seeking custody.

13. What should I do if I do not want the other parent to have custody of my children if I am not available?

You should consult with a lawyer because every case is different. At a minimum, you should write an explanation for why the other parent is unfit to care for your children, and gather as much evidence as possible and give it to the caregiver. Your caregiver may need to get a court order to have custody of the children instead of the other parent.

14. Will the State take my children away from me?

Depends, if you have signed a temporary parental consent agreement the State should not take custody of your children. However, if both parents become unavailable and there is no appropriate caregiver available, the State will take the children to protect them. The State may place the children in foster care. If that happens, the State must provide notice to the parents and the parents will have an opportunity to be heard and will have a chance to fight for the custody of their children or to express their preferences for who should care for the children.

Travel:

15. Can the caregiver travel with my children if I am out of the country?

Yes, with written consent authorizing the caregiver to travel with the children internationally. The temporary parental consent agreement can authorize a caregiver to travel internationally with the children if it is notarized. The caregiver must have legal status and be able to come and go from the United States.

16. Can my children travel outside of the United States without a parent?

Yes, children can travel to another country (like Mexico) without a parent. They need written travel permission signed by both parents authorizing a caregiver to take the children across international borders, or a court order authorizing international travel. The temporary parental consent agreement can include this written travel permission.

17. What is a written travel permission?

A written travel permission is a document that allows a non-parent to travel with minor children. The travel permission must include the name of the children, birthdate, name of the person allowed to travel with the children, parents' names and signatures. A temporary parental consent agreement can include written travel permission.

18. Is the written travel permission valid if only one parent signs it?

Yes, the written travel permission is valid if one parent signs it if the other parent is dead or was not included in the child's birth certificate. The travel permission may also be valid with one parent's signature if that parent has legal and physical custody of the minor child. However, if the other parent files a court case the written travel permission can be void and the court can issue an order against travel.

19. Does the written travel permission need to be notarized?

Yes, the travel permission must be notarized. Even though a temporary parental consent agreement does not have to be notarized, it must be notarized if it includes the written travel permission.

Passport:

20. Do my children need a valid passport to travel outside of the United States?

Yes, children need a valid passport to travel. The passport must be from the country where your children are citizens.

21. How can I get a United States Passport for my children?

Both parents may apply for a U.S. passport if the children are U.S. citizens. The parents need to go to the post office or to the designated location and apply, pay the fee and provide evidence as to the children's citizenship (birth certificate) and copies of the parent's photo identification, for *example* front and back copies of a valid driver's license, a consular identification card from the home country of the parent like a *matricula consular*, or an expired passport.

One parent may apply for a U.S. passport if the children are U.S. citizens and: the birth certificate only lists one parent; a court order authorizes one parent to apply; the parent has a notarized document from the other parent titled, "Statement of Consent" Department of State Form DS-3053; or if the other parent has died.

One parent may apply for a U.S. passport if the children are U.S. citizens and the other parent cannot be located. The parent must complete "Statement of Exigent/Special Family Circumstances," Department of State Form DS-5525. The form must be signed and notarized by the one available parent. Examples of exigent/special family circumstances are if one parent has court-ordered custody and the custody order allows the parent to apply for the children's passport without the other parent's permission, or if the other parent is incarcerated, or if the other parent is restrained from contacting the parent by a restraining or protection order.

22. Can I give permission for my caregiver to apply for a U.S. passport for my citizen children?

Yes. The temporary parental consent agreement can give permission for a caregiver to apply for a U.S. passport, but additional documents are required. In addition to notarized written authorization, the caregiver will need: (1) copies of the parents' photo identification, for *example* front and back copies of a valid driver's license, a consular identification card from the home country of the parent like a *matricula consular*, or an expired passport; and (2) the children's birth certificates.

23. What if only one parent gave permission for my caregiver to apply for a U.S. passport for my citizen children?

The caregiver will need to submit the "Statement of Consent," Department of State Form DS-3053, signed and notarized by the other parent if the other parent is available.

If the other parent is not available, the caregiver will need to submit the "Statement of Exigent/Special Family Circumstances," Department of State Form DS-5525. The form must be signed and notarized by the one available parent. Examples of exigent/special family circumstances are if one parent has court-ordered custody and the custody order allows the parent to apply for the children's passport without the other parent's permission, or if the other parent is incarcerated, or if the other parent is restrained from contacting the parent by a restraining or protection order.

24. How can I get a passport for my children if they were born in another country?

Both parents can apply for a passport at the nearest consulate for the country where the children were born. For example, the Mexican Consulate in Seattle can issue passports for children who are Mexican citizens. For additional information about specific requirements/options when only one parent is available, contact the consulate.

Other:

25. What other documents will the caregiver need?

Parents should gather the children's birth certificates, social security cards, any custody orders and/or agreements, immunization records, health insurance cards, and any special health care plans. The parent should keep the temporary parental custody agreement and all these documents in one place and tell the caregiver where to find the documents, or give the caregiver a set of documents for safekeeping. The parents should also keep a copy of the set of documents.

26. What happens to my house or property if I am deported?

You are still the owner of your real and personal property. You may sign a power of attorney to authorize someone else to act on your behalf. You should choose someone you trust to deal with your belongings.