

# ALBUQUERQUE DIVORCE LAWYER BLOG

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## Acquiring Third Party Child Custody in New Mexico

Sadly, there are often times when neither of a child's parents is able to care for the child. In such cases, a third-party, who may or may not be a family member, may petition the Court for child custody of the Child. In New Mexico, there are five different ways in which a third-party child custody may be awarded.

The first three ways by which a third-party may gain child custody over a child are pretty straightforward. First, the court may grant child custody to a third-party as part of a divorce proceeding if the court determines that neither parent is capable of caring for the child and the third-party properly intervenes in that divorce proceeding. Second, under the probate code, the court may grant custody to a third-party when the child's parent or guardian dies. Third, the court may grant custody to a third-party as the result of finding of abuse and neglect by the child's parents or current guardian. Abuse and neglect proceedings are generally initiated by the Department of Children Youth and Families, but they can be initiated by the third-party seeking custody.

Fourth, the third-party seeking custody can file a petition under the Kinship Guardianship Act, which typically applies when a child has lived with the third-party for more than ninety (90) days prior to the filing of a petition. However, custody can also be granted under the Kinship Guardianship Act even if the child hasn't lived with the third-party for ninety (90) days, if the child's parents are unwilling or unable to care for the child and there are extraordinary circumstances. In fact, a third-party can be granted custody of a child is when extraordinary circumstances exist, even without a Kinship Guardianship petition, and there is no other remedy available under the law, which is the fifth way for a third-party to obtain custody.

In all of the situations referenced above, the court will only grant custody to a third-party if that custody award is in the child's best interest. The person seeking custody will often have the burden of proving to the court that they are the best person to care for a child, which can be a very complicated process. Thus, it is very important for a person seeking custody to consult an attorney before undertaking such an action.

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