



**Report | 7/31/2018 | D'Adre Cunningham |  
NATIONAL SURVEY OF POWER OF ATTORNEY STATUTES**

There are forty-six (46 states) and the District of Columbia (hereinafter, "D.C."), which have a statute authorizing the use of power of attorney instruments.<sup>1</sup> Twenty-one (21) states authorize the use of a power of attorney instrument by a principal in order to confer agency without limiting the legal context where the conferred agency status can be used.<sup>2</sup> Twenty-four (25) states<sup>3</sup> and D.C. specifically authorize a parent's use of a power of attorney instrument to confer nearly all<sup>4</sup> of their care, custody, and child-rearing decisions to another person.<sup>5</sup>

Two (2) states have more than use or purpose for the power of attorney instrument with regards to the care of minor children.<sup>6</sup> A few states limit the circumstances under which a parent may confer parental rights and obligations for the care of their minor children to limited circumstances, like medical or educational decisions only,<sup>7</sup> no prior child custody order,<sup>8</sup> hardship,<sup>9</sup> disability of the principal,<sup>10</sup> incapacity of the surviving parent,<sup>11</sup> or death of the surviving parent.<sup>12</sup>

The twenty-three (23) remaining states and D.C. authorize the use of a power of attorney instrument to confer rights and obligations of caring for minor children whenever the parent chooses, under any circumstances, and without court approval. Of these states, there are three (3) states that limit who can be designated as caregiver;<sup>13</sup> and twenty (20) states and D.C. that do not limit who is designated as caregiver.<sup>14</sup> The use of power of attorney instruments in those twenty (20) states and D.C., which do not limit *who* may be designated as caregiver by a parent, may limit the *length of time* the instrument may be in effect.<sup>15</sup>

---

<sup>1</sup> For simplicity, the four states without any such statutes are: Louisiana, New Hampshire, South Dakota, and West Virginia.

<sup>2</sup> Arkansas, California, Connecticut, Delaware, Florida, Idaho, Iowa, Kansas, Maryland, Massachusetts, Mississippi, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, Wisconsin, and Wyoming.

<sup>3</sup> Alabama, Alaska, Arizona, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Tennessee, Utah and Washington.

<sup>4</sup> Most of these states do not allow a parent to confer to another person the ability to consent to the minor's marriage or minor's adoption: Alabama, Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Oregon, and Utah. The other states and DC do not limit the caregiving authority in the state law: Georgia, Indiana, Illinois, Nevada, New York, Ohio, Tennessee, and Washington.

<sup>5</sup> Florida, Kentucky, Tennessee, and Washington.

<sup>6</sup> Illinois has two laws: one governing medical care decisions for minor children only, and the other for the general care and child-rearing of minor children. Washington has three laws: one governing medical care decisions for

---

minor children only, one for the care and child-rearing of children at the death or incapacity of the parent, and the third for the general care and child-rearing of minor children during disability of the parent.

<sup>7</sup> Two (2) states (Florida and Kentucky) only authorize the use of a power of attorney instrument by a parent to confer rights related to consent for medical or education decisions of their minor child.

<sup>8</sup> New Jersey provides for the use of the power of attorney instrument by a parent to confer custody and care of their minor child only if there is no pre-existing child custody order issued by a court of competent jurisdiction over the minor child.

<sup>9</sup> Georgia and Tennessee actually name hardship as a reason for needing the instrument, while Tennessee provides a definition: "Hardships may include, but are not limited to: serious illness or incarceration of a parent or legal guardian; the physical or mental condition of the parent or legal guardian or the child is such that care or supervision cannot be provided; or the loss or inhabitability of the child's home as a result of a natural disaster."

<sup>10</sup> Washington State allows for conference of the parenting rights and responsibility to another "during the disability of the principal." The statute, however, does not define disability.

<sup>11</sup> Kansas and Washington. In this circumstance, court approval is required even though the guardian has designated by a power of attorney instrument due to the incapacity of a parent.

<sup>12</sup> Kansas and Washington. In this circumstance, court approval is required even though the guardian has designated by a power of attorney instrument due to the death of a parent.

<sup>13</sup> Georgia and Ohio specifically only allow for parents to designate grandparents as caregivers using this instrument, and the law does not have a time limit. Tennessee restricts the designated caregiver to adult state residents only.

<sup>14</sup> Alabama, Alaska, Arizona, Colorado, D.C., Hawaii, Idaho, Illinois, Indiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, and Utah.

<sup>15</sup> Four states (Illinois, Indiana, Nevada, and Ohio) and D.C. do not limit the length of time the power of attorney may be used. Idaho allows when the caregiver designated by the parent is the grandparent or sibling of the child, or a sibling of the parent, for the parent to set the designated time limit in the terms of the power of attorney instrument, and provides that if one is not specified, the instrument expires after 3 years. Seven (7) states (Alabama, Alaska, Colorado, Hawaii, Maine, Minnesota, and Missouri) limit the time the length of time the power of attorney instrument may be used to confer parental rights and obligations to twelve 12 months. Nine (9) states (Arizona, Michigan, Montana, Nebraska, New Mexico, New York, North Dakota, Oregon, and Utah) limit the length of time the power of attorney instrument may be used to confer parental rights and obligations to six (6) months.

State	Statutory Cite	Year	Description	child specific
Alabama	Ala. Code § 26-2A-7	1905	A parent who has custody, or a guardian, of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any power regarding health, support, education or maintenance of the person or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. Temporary "delegation" of parental powers does not relieve the parent or guardian of the primary responsibility for the minor or incapacitated person.	y
Alaska	Alaska Stat. § 13.26.020	1972	A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.	y
Arizona	Ariz. Rev. Stat. Ann. § 14-5104	1974	A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any powers he may have regarding care, custody or property of the minor child or ward, except power to consent to marriage or adoption of the minor.	y
Colorado	Colo. Rev. Stat. Ann. § 15-14-105	2001	A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person, for a period not exceeding twelve months, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.	y
District of Columbia	D.C. Code § 21-2301	2007	The parent of a child may create a revocable custodial power of attorney that grants to another person any of the parent's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to:(1) Enroll the child in school; (2) Obtain from the school educational and behavioral information about the child; (3) Consent to all school-related matters regarding the child; and (4) Consent to medical, psychological, or dental treatment for the child. The custodial power of attorney may not grant authority to consent to the marriage or adoption of the child. The custodial power of attorney shall not affect the rights of the parent of the child in any proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child.	y
Florida	Fla. Stat. Ann. § 709.2102 (7)	1993	A power of attorney executed after July 1, 2001, to provide medical consent for a minor includes the power to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded by the individual executing the power of attorney.	y
Georgia	Ga. Code Ann. § 19-9-122	2008	Allows the parent of a minor child to delegate power of attorney over the child to any grandparent residing in the state when hardship prevents the parent from caring for the child. This authority may be delegated without the approval of a court by executing in writing a power of attorney for the care of a minor child in a form substantially complying with the provisions of this article.	y
Georgia	Ga. Code Ann. § 19-9-123	2008	Through the power of attorney for the care of a minor child, the parent may authorize the agent grandparent to perform the following functions: enrolling the child in school and extracurricular activities; enrolling the child in any health insurance program offered to the grandparent; providing access to school records; arranging for an consent to medical, dental ,and mental health treatment; providing access to records for the aforementioned treatments; and providing for the child's food, lodging, housing, recreation, and travel.	y

State	Statutory Cite	Year	Description	child specific
Georgia	Ga. Code Ann. § 19-9-124	2008	An agent grandparent under a power of attorney for the care of a minor child shall act in the best interests of the minor child. Such agent grandparent shall not be liable for consenting or refusing to consent to medical, dental, or mental health care for a minor child when such decision is made in good faith and is exercised in the best interests of the minor child. The agent grandparent shall have the right to enroll the minor child in a public school serving the area where the agent grandparent resides and may enroll the minor child in a private school, pre-kindergarten program, or home study program. The public school shall allow such agent grandparent with a properly executed power of attorney for the care of a minor child to enroll the minor child. At the time of enrollment the grandparent shall provide to the school such residency documentation as is customary in that school district. The school may request reasonable evidence of the stated hardship. If a public school denies enrollment of a minor child under this Code section, such denial may be appealed.	y
Georgia	Ga. Code Ann. § 19-9-129	2008	Includes additional information about power of attorney for a minor child, including: good faith reliance on power of attorney for care of a minor, emergency medical treatment, certification of purpose for executing power of attorney for care of a minor, revocation of power of attorney, and statutory power of attorney for care of a minor child.	y
Hawaii	Haw. Rev. Stat. § 560:5-105	2004	A parent or guardian of a minor or incapacitated person, by a power of attorney, may delegate to another person for a period not exceeding one year, which time limit shall be expressly stated in the document, any power regarding the care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.	y
Idaho	Idaho Code Ann. § 15-5-104	1991	A parent or a guardian of a minor, by a properly executed power of attorney, may delegate to another person, any of the parent's or guardian's powers regarding care, custody, or property of the minor or ward including, but not limited to, powers for medical care and educational care of the minor or ward, except to consent to marriage or adoption. The delegation for a minor to a grandparent, a sibling, or to a sibling of either parent of the minor, shall continue in effect until the time period, date, or condition set forth in the power of attorney for automatic expiration of the power of attorney occurs. If it does not provide a time for automatic expiration, it shall continue for 3 years. The power may be revoked in a writing delivered to the grandparent or sibling by the delegating parent or guardian. The power of attorney does not need to be notarized or recorded.	y
Illinois	tit. 755 § 5/11-5.4	1994	A parent, adoptive parent, or adjudicated parent whose parental rights have not been terminated, or the guardian of the person of a minor may appoint in writing, without court approval, a short-term guardian of an unmarried minor or a child likely to be born. The written instrument shall be signed by, or at the direction of, the appointing parent in the presence of at least 2 credible witnesses at least 18 years of age, neither of whom is the person appointed as the short-term guardian. The person appointed as the short-term guardian shall also sign the written instrument, but need not sign at the same time as the appointing parent.	y
Illinois	tit. 755 § 45/4-3	1987	Defines the powers of attorney regarding health care powers as "all powers an individual may have to be informed about and to consent to or refuse to withdraw any type of health care for the individual and all powers a parent may have to control or consent to health care for a minor child."	y
Indiana	Ind. Code Ann. § 29-3-3-3	1989	Except as otherwise determined in a dissolution of marriage proceeding, a custody proceeding, or in some other proceeding authorized by law, and unless a minor is married, the parents of the minor jointly (or the survivor if one parent is deceased), if not an incapacitated person, have, without the appointment of a guardian, giving of bond, or order or confirmation of court, the right to custody of the person of the minor and the power to execute the following on behalf of the minor: (5) Consents, waivers of notice, or powers of attorney under any statute.	y

State	Statutory Cite	Year	Description	child specific
Kansas	Kan. Stat. Ann. § 59-3054(b) & (c)	2002	A surviving natural guardian, by last will or by a trust instrument establishing an inter vivos trust may nominate a guardian or conservator, or both, for any of such guardian's minor children. The nominated guardian or conservator, if a fit and proper person, shall be appointed by the district court.	y
Kentucky	Ky. Rev. Stat. Ann. § 27A.095	2006	"Medical treatment" means any medical, chiropractic, optometric, or dental examination, diagnostic procedure, and treatment, including but not limited to hospitalization, developmental screening, mental health screening and treatment, preventive care, pharmacy services, immunizations, well-child care, and blood testing, except that "medical treatment" shall not include HIV/AIDS testing, controlled substance testing, or any other testing for which a separate court order or informed consent is required under other applicable law. The Administrative Office of the Courts shall develop a standard power of attorney for the limited purpose of establishing authority to consent to medical treatment for a minor and to make school-related decisions for a minor.	y
Maine	tit. 18-A § 5-104	2016	A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 12 months, any of that parent's or guardian's powers regarding care, custody or property of the minor child or ward, except the power to consent to marriage or, adoption of a minor ward or termination of parental rights to the minor. A delegation by a court-appointed guardian becomes effective only when the power of attorney is filed with the court. A delegation of powers under this section does not deprive the parent or guardian of any parental or legal authority regarding the care and custody of the minor or incapacitated person.	y
Michigan	§ 700.5103	2000	By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption.	y
Minnesota	§ 524.5-211	2003	A parent, legal custodian, or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption of a minor ward.	y
Missouri	§ 475.024	1983	A parent of a minor, by a properly executed power of attorney, may delegate to another individual, for a period not exceeding one year, any of his or her powers regarding care or custody of the minor child, except his or her power to consent to marriage or adoption of the minor child.	y
Montana	§ 72-5-103	1999	A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.	y
Nebraska	§ 30-2604	1974	A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.	y
Nevada	§ 159.205	1969	A parent, without the approval of a court, may appoint in writing a short-term guardianship for an unmarried minor child if the parent has legal custody of the minor child. The appointment of a short-term guardianship is effective for a minor who is 14 years of age or older only if the minor provides written consent to the guardianship.	y

State	Statutory Cite	Year	Description	child specific
New Jersey	§ 3B:12-39	1982	A parent, other than where custody of a minor has been awarded by a court of competent jurisdiction, with the consent of the other parent, if the latter is living and not an incapacitated person or a guardian of the person of a minor or an incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.	y
New Mexico	§ 45-5-104	1975	A parent or a guardian of a minor or incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody or property of the minor child or protected person, except his power to consent to marriage or adoption of a minor protected person.	y
New York	§ 5-1551	2005	A parent of a minor may designate another person as a person in parental relation to such minor for a period not exceeding six months provided that there is no prior order of any court in any jurisdiction currently in effect that would prohibit such parent from himself or herself exercising the same or similar authority, and provided further, that, in the case where a court has ordered that both parents must agree on education or health decisions regarding the child, a designation pursuant to this subdivision shall not be valid unless both parents have consented thereto. Such designation shall be in the form prescribed by section 5-1552 of this title, and may be presented to any school, health care provider or health plan that requires such designation by either the parent or the designee.	y
North Dakota	§ 30.1-26-04	1973	A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.	y
Ohio	§ 3109.52	2004	The parent, guardian, or custodian of a child may create a power of attorney that grants to a grandparent of the child with whom the child is residing any of the parent's, guardian's, or custodian's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological, or dental treatment for the child. The power of attorney may not grant authority to consent to the marriage or adoption of the child. The power of attorney does not affect the rights of the parent, guardian, or custodian of the child in any future proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child and does not grant legal custody to the attorney in fact.	y
Ohio	Ohio Rev. Code Ann. § 2111.12 (c)	1997	A parent pursuant to a durable power of attorney may nominate a person to be a guardian for one or more of the parent's minor children, whether born at the time of the making of the petition or afterward.	y
Oregon	Or. Rev. Stat. § 109.056	2005	A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the powers of the parent or guardian regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.	y
Tennessee	Tenn. Code Ann. § 34-6-302	2003	A parent or parents of a minor child may delegate to an adult person residing in this state temporary care-giving authority regarding the minor child when hardship prevents the parent(s) from caring for the child. Hardships may include, but are not limited to: serious illness or incarceration of a parent or legal guardian; the physical or mental condition of the parent or legal guardian or the child is such that care or supervision cannot be provided; or the loss or uninhabitability of the child's home as a result of a natural disaster.	y

State	Statutory Cite	Year	Description	child specific
Tennessee	Tenn. Code Ann. § 34-6-304	2003	Through the power of attorney for care of a minor child, the parent may authorize the caregiver to perform the following functions without limitation: enroll the child in school and extracurricular activities; obtain medical, dental and mental health treatment for the child; and provide for the child's food, lodging, housing, recreation and travel.	y
Tennessee	Tenn. Code Ann. § 34-6-216	1989	If the provisions of a valid durable power of attorney for health care designate a person other than a child's parent to consent to treatments or procedures, the provisions of the power of attorney shall control.	y
Utah	Utah Code Ann. § 75-5-103	1975	A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.	y
Washington	Wash. Rev. Code Ann. § 11.88.080	1990	The surviving parent of a minor child may nominate a guardian by last will or durable power of attorney, which is effective in the event of the death or incapacity of the parent. The court shall affirm a parent's nomination unless the court finds the individual is not qualified to serve.	y
Washington	Wash. Rev. Code Ann. § 11.125 Chapter; RCW 11.125.410	2016	Unless the power of attorney otherwise provides, the following general provisions shall apply to any power of attorney making reference to the care of the principal's minor children: (1) A parent or guardian, through a power of attorney, may authorize an agent to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent. (3) The authority of any guardian of the person of any minor child shall supersede the authority of a designated agent to make health care decisions for the minor only after such designated guardian has been appointed by the court. (4) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control. [ 2016 c 209 § 218.]	y
Washington	Wash. Rev. Code Ann. § 11.94.010, repealed	1974	A parent or guardian, by a properly executed power of attorney, may authorize an attorney in fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in Wash. Rev. Code Ann. § 26.28.015 (age 18), to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.	y
Washington	RCW 11.125.410 (2)	2016	(2) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.	y