

LEGAL FACT SHEET

Non-Parent Caregivers: Comparison of Custodial Arrangements

LEGAL ARRANGEMENTS	STATUTES RECOGNIZE	PROCEDURE	AUTHORITY	SECURITY & STABILITY	FINANCIAL ASSISTANCE	KINSHIP RESOURCES
INFORMAL CUSTODY - "Person in Parental Relationship"	PHL 2164; EdL 3212, DRL 75; "Lawful Custody"	No court order; caregiver and/or parent sign affidavits	Responsible for schooling; consent to immunize	No protection	Non-parent "Child-Only" Grant	Kinship Navigator; Local OCFS Kinship Programs
INFORMAL CUSTODY - Parental Designation	GOL 5-1551; PHL 2504	If notarized - lasts 12 months from either date signed or can spring from designated event; If not notarized – lasts 1 month from date of signing	Right to make most medical decisions and considered as "Person in Parental Relation"	No protection	Non-parent "Child-Only" Grant	Kinship Navigator; Local OCFS Kinship Programs
LEGAL CUSTODY a/k/a Article 6 Custody	DRL 240, FCA 651, Court orders will often detail very specific rights allowed or not allowed.	May need "extraordinary circumstances;" also sex offender and orders of protections registries, any Article 10 decisions	Judicial orders should include medial authoirty b/c little statutory authority; DRL 74 & FCA 657 school enrollment	Court order protection	Non-parent "Child-Only" Grant	Kinship Navigator; Local OCFS Kinship Programs
DIRECT CUSTODY a/k/a Article 10 Custody	FCA 1017	Court and County control process	Legal custody may be retained by county but caregiver has physical custody; County/Caregiver agreements	Limited protection	No foster care payments, but eligible for non-parent "Child-Only" Grant	Kinship Navigator; Local OCFS Kinship Programs

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LEGAL GUARDIAN	SCPA Article 17, FCA 661 - Guardian can control the person and/or property	Standard: similar to legal custody but petition is more cumbersome, includes OCFS statewide central register background check form, where all members of household must provide 28 years of prior addresses; Child abuse registry and criminal record check; background searches may trigger ICE investigation!	DRL 74 FCA 657 Edl 3212 PHL 2164 PHL 2504 PHL 18	Same as legal custody, in certain cases legal guardian can control child's financial interests, lasts until either age 18 or 21	Non-parent "Child-Only" Grant	Kinship Navigator, Local OCFS Kinship Programs, Permanency Resource Centers
FOSTER - KINSHIP GUARDIAN ("KinGAP")	SSL 458-a-f	Agreement with county, then caregiver can petition for Guardianship	Same as legal guardian	Same as legal guardian	Subsidy Agreement, may be continued for successor.	Kinship Navigator, Local OCFS Kinship Programs, Permanency Resource Centers

Bennett v. Jeffreys, 20 NY2d 543 (1976): Non-parent may obtain custody only if extraordinary circumstances exist, followed by an analysis indicating it would be in the child's best interests of child(ren) for the non-parent to obtain custody. Examples of extraordinary circumstance - parental unfitness, abandonment, child living for extended period of time with non-parent.

Suarez v. Williams, 26 NY3d 440 (2015): Pursuant to DRL 72(2), extraordinary circumstances exist when the child has lived with the grandparents for an extended period of time, even if the child has had some contact with the parents.

Guinta v. Doxtator, 20 AD3d 47 (4th Dept 2005): Court may not revisit the issue of extraordinary circumstances once extraordinary circumstances have been established.

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Citations:

(**Key:** **SCPA** = Surrogate's Court Procedure Act; **DRL** = Domestic Relations Law; **SSL** = Social Services Law; **FCA** = Family Court Act; **PHL** = Public Health Law; **GOL** = General Obligations Law; **Edl** = Education Law.)

SCPA 1700 ff: Jurisdiction, procedures, etc. for guardianships

SCPA 1726: Standby Guardian statute. Parents, Guardians, Custodian, and Certain caretakers may designate a standby.

DRL 240: Custody proceedings.

DRL 74: Guardians and legal custodians both qualify for school enrollment and employee health insurance.

DRL 75 ff. Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) codified; jurisdiction when children move between states.

DRL 72(2): Two Years residence in grandparent's home is an extraordinary circumstance.

SSL 458a-f: Kinship Guardianship procedures and reporting.

FCA 651: Family Court jurisdiction and procedures for custody proceedings.

FCA 661: Family Court jurisdiction and procedures for guardianship of the person proceedings.

FCA 657: Guardians and legal custodians qualify for school enrollment and employee health insurance. Guardians have medical decision making authority.

PHI 2164: Person in parental relation has duty to immunize.

PHL 2504: Designees are Person in parental relation, not major medical. Implies guardians have medical decision making authority.

GOL 5-1551: Parental designations; parents may designate most authority via suggested form.

Edl 3212: Person in parental relations has schooling responsibilities.

Legal Resources: NYS Kinship Navigator legal resources has links to legal resources in NYS, including guides/forms for guardianship and custody petitions

Revised October 1, 2018. **Disclaimer:** The above information is for informational purposes only and is not legal advice. It should not be substituted for the advice of your attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Please refer to the NYS Kinship Navigator home page to read the entire disclaimer.