

**Non-Parent Caregivers: Comparison of Custodial Arrangements**

| <b>LEGAL ARRANGEMENTS</b>   | <b>Key Statutes</b>  | <b>PROCEDURE</b>   | <b>AUTHORITY</b>  | <b>SECURITY &amp; STABILITY</b> | <b>FINANCIAL ASSISTANCE</b>   | <b>KINSHIP RESOURCES</b>                       |
|---|--|--|---|---------------------------------|---|--|
| <b>INFORMAL CUSTODY</b><br><b>“Person in Parental Relationship”</b> | 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 |
| <b>INFORMAL CUSTODY</b><br><b>Parental Designation</b>              | GOL 5-1551; PHL 2504   | If notarized - lasts 12 months from either date signed or can spring from designated event;<br>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 |
| <b>LEGAL CUSTODY</b><br><b>a/k/a Article 6 Custody</b>              | DRL 240, FCA 651,<br>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                             | DRL 74 & FCA 657 school enrollment, medical consent   | Court order protection          | Non-parent “Child-Only” Grant   | Kinship Navigator; Local OCFS Kinship Programs |
| <b>DIRECT CUSTODY</b><br><b>a/k/a Article 10 Custody</b>            | 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                              |

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| <b>LEGAL ARRANGEMENTS</b>                   | <b>LEGAL RECOGNITION</b>   | <b>PROCEDURE</b>  | <b>LEGAL AUTHORITY INCLUDES</b>                                 | <b>SECURITY &amp; STABILITY</b>   | <b>FINANCIAL</b>                                   | <b>KINSHIP RESOURCES</b>  |
|---|--|---|---|---|--|---|
| <b>LEGAL GUARDIAN</b>                       | 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<br>FCA 657<br>Edl 3212<br>PHL 2164<br>PHL 2504<br>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 |
| <b>FOSTER - KINSHIP GUARDIAN ("KinGAP")</b> | 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 |



## LEGAL FACT SHEET

### Non-Parent Caregivers: Comparison of Custodial Arrangements

**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 nonparent.

**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.

#### **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, employee health insurance and medical decision making authority.

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

**PHL 2504:** Designates certain persons with authority to consent to immunization.

**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

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Family Center and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Family Center program, funded by the New York State Office of Children and Family Services. Catholic Family Center is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.