

# LEGAL FACT SHEET

## KINSHIP CAREGIVERS: COMPARISON OF CUSTODY AND GUARDIANSHIP

LEGAL ARRANGEMENTS	RECOGNITION	PROCEDURE	AUTHORITY	SECURITY	FINANCIAL	KINSHIP RESOURCES
INFORMAL CUSTODY	PHL 2504 EdL 3212 "Lawful Custody"	No court order; Caregiver and/or Parent affidavits "Person In Parental Relationship"	Immunizations Education – Need Proof; 8 NYCRR 100.2 (y)(3)Section 100.2(y), Limited Vital Records	Limited security	"Child-Only" Grant	Kinship Navigator, local OCFS programs, Volunteer Counseling Services
Parental Designation	GOL 5-1551 PHL 2504	Notarized 6 months; Just signed – 1 month	Immunization Education – Need Proof; Limited Vital Records	Limited security	"Child-Only" Grant	Kinship Navigator, local OCFS programs, Volunteer Counseling Services
LEGAL CUSTODY a/k/a Article 6 Custody	DRL 240, FCA 651, Types: joint, physical, , "temporary", "permanent"	Standard: consent or extraordinary circumstances followed by best interests analysis, Review of Orders of Protection and sex offender registry, UCCJEA DRL 76	Judicial orders may include specific provisions; little statutory authority - DRL 74, FCA 657 School enrollment, Edl 3212? PHL 2164?	Bennett v. Jeffreys, DRL 72(2), Suarez v. Williams, Guinta v. Doxtator	"Child-Only" grant	Kinship Navigator, local OCFS programs, Volunteer Counseling Services
DIRECT CUSTODY a/k/a Article 10 Custody	FCA 1017, THREE OPTIONS: 1. Custody, Direct Custody, Foster Care	Court and County control	Legal custody retained by county but caregiver has physical custody, County/Caregiver agreements	No protection for caregivers	No foster care payments, but eligible for non-parent grant	Kinship Navigator, local OCFS programs, Volunteer Counseling Services

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<p><b>LEGAL GUARDIAN (Standby)</b></p>	<p>SCPA Article 17, Standby SCPA 1726, FCA 661, Types: permanent, of property, of person, standby</p>	<p>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</p>	<p>Extensive statutes, DRL 74, FCA 657, Edl 3212, PHL 2164, PHL 2504</p>	<p>Same as legal custody, in certain cases legal guardian can control child's financial interests, lasts until either age 18 or 21</p>	<p>No foster care payments, but eligible for non-parent grant</p>	<p>Kinship Navigator, local OCFS programs, Volunteer Counseling Services Permanency Centers</p>
<p><b>FOSTER - KINSHIP GUARDIAN ("KinGAP")</b></p>	<p>SSL 458-a-f</p>	<p>Agreement with county, then caregiver can petition for Guardianship</p>	<p>Same as legal guardian</p>	<p>Same as legal guardian</p>	<p>Subsidy Agreement, may be continued for successor.</p>	<p>Above plus Permanency Centers</p>

**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 76 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: 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 person in parental relations for up to six months.

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Edl 3212: Defines who are “persons in parental relations”; parents, guardians, and custodians (custodian definition does not include legal custodians).

**Cases:** **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 interest for the non-parent to obtain custody. Extraordinary Circumstance include children living for “extended” periods of time with non-parent. **Suarez v. Williams, 26 NY3d 440 (2015):** 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 (4<sup>th</sup> Dept 2005):** Court may not revisit the issue of extraordinary circumstances once extraordinary circumstances have been established.

**Legal Resources:** NYS Kinship Navigator legal resources has links to legal resources in NYS, including guides/forms for guardianship and custody petitions, [http://www.nysnavigator.org/?page\\_id=50](http://www.nysnavigator.org/?page_id=50)