

## Legal Relationships for Kin

---

Today many children are raised by someone other than their parents. This article focuses on the many different relationships a caregiver (i.e., someone who is not a parent) may have with a child in New York State. Knowing the pros and cons of each will help your family decide what is best for you. This article is designed to be a simple guide - call our office with complex questions.

**INFORMAL CUSTODY** does not involve a court order or legal proceedings. In this situation, a child lives with a caregiver but the parents retain the right to make most major decisions. These might include medical, educational, and visitation decisions. Most importantly, when a caregiver has *informal* custody, the parent may remove the child at any time. For instance, a parent may place a child in informal custody and then attempt to remove them during a crisis or while using drugs or alcohol. A caregiver can call the police if they believe a child may be in danger, but unless the situation requires Child Protective Services intervention, the police have little authority to intervene. Informal Custody may be a good option for your family if you, the caregiver, have a good relationship with the child's parent, and there is clear communication regarding how long the child will live with you.

**DESIGNATION OF CAREGIVER FORMS** are quick and easy to use. Forms are available granting authority for either thirty days or for up to six months. When properly signed by the parents and caregivers, and properly witnessed or notarized, the forms allow the caregiver to make educational and/or medical decisions for the child. When parents and caregivers are on cooperative terms, these simple, limited purpose forms may be sufficient to allow the caregiver to take care of the child.

**LEGAL CUSTODY** will give you the legal right to make more decisions (about school and medical issues, for example) regarding a child living with you. Legal custody is awarded by a judge, and you must petition for custody in Family Court. If the child's parents agree that you should have custody, a simple petition form may be all that is required. If the child's parents do *not* agree that you should have custody, they may challenge your petition. You would then have to show that there are *extraordinary circumstances* that make it necessary for the court to remove custody from the parents. These could include neglect, abuse, unfitness, or other circumstances. If you are awarded custody, the judge may set up a visitation plan for the parents. Or, you may be awarded joint custody. It is important to remember that custody can be changed by the Family Court if it is successfully challenged at a later date. If custody is not challenged, it is effective until the child's 18<sup>th</sup> birthday.

To file for custody, you go to **Family Court, One Niagara Plaza, 4<sup>th</sup> Floor, Buffalo, New York, Petition Processing**. Tell them you want to file for custody and they will give you the appropriate forms to fill out, and petition processing clerk will help you file a petition.

**GUARDIANSHIP** is similar to legal custody. When you are the guardian of a child, you will have the same legal rights you would with a formal custody arrangement, and sometimes other rights as well, since some educational and medical institutions prefer to deal with guardians than custodians.

The parents of the child cannot make decisions for the child once you are a legal guardian, and as in a legal custody arrangement, they cannot remove the children from you. As in a custody situation, parents can still be financially responsible for a child with a guardian, and they may be granted visitation rights by the Family Court. Once you enter into a

guardianship arrangement, it continues until the court changes it. If the parents of the child are dead or in prison, this option may be good for you.

There are two kinds of guardianship. The first is *guardianship of the person*, where the guardian has the legal right to make daily decisions for a child. The second kind of guardianship is *guardianship of the property*, where a caregiver can make decisions about the child's finances. You may file a guardianship petition at Erie County Surrogate's Court, 2<sup>nd</sup> Floor, 92 Franklin Street, Buffalo, New York.

**KINSHIP FOSTER CARE** is a situation that exists when children are in the legal custody of the Department of Social Services through Child Protection Services, and then placed with a relative caregiver. The relative's home then becomes a foster care home for the child. The caregiver has only temporary physical custody of the child, and the state DSS retains the legal right to make all major decisions concerning the child.

There are some important benefits to the foster care system for the child and the caregiver. The first is that foster care payments are considerably higher than other forms of assistance, such as Public Assistance.

The second benefit is that foster care homes receive many services and intensive casework they otherwise might not be eligible for. Some caregivers choose not to give the DSS the amount of involvement with their child that foster care means. Others welcome the additional money and services. Another benefit is that if the parents are not successful in getting their children back, foster parents are usually given preference in adoption.

To enter into a Kinship Foster Care arrangement, you and your home must be approved for foster care, as must other people living in your household. You may have a difficult time becoming a Kinship Foster Care parent if you have a criminal record or a disability that would prevent you from caring for the child. *The child you wish to take care of must also be a foster care child.* A child may have a difficult time becoming a foster care child if you, the caregiver, already have legal custody, or if Child Protective Services was never involved with the case.

**FCA §1017 TEMPORARY CUSTODY** occurs when the Child Protection Services has filed a neglect or abuse petition against the parent(s) and the child is removed from the parents' home. Instead of placing the child in foster care, the court may permit the child to live with a suitable relative who acts as a temporary custodian. While the case against the parent(s) is pending, the custodian may apply for public assistance for the child but will not get foster care payments. Relatives who wish to serve as §1017 custodians should contact the Child Protection worker, and appear in Family Court when the case is scheduled to express their interest.

**ADOPTION** is a permanent legal relationship granted by the court. Once a child is adopted, the natural parent's rights are terminated and the adoptive parent assumes all rights and responsibilities of a natural parent. These responsibilities include financial support and the responsibility to care for and educate your child. For children in foster care homes that are adopted, there are sometimes subsidies available, especially if the child has needs. Locally, foster care adoptions are handled in Family Court, and private placement adoptions are handled in Surrogate's Court.

Neighborhood Legal Services, Inc., provides representation to kinship caregivers on a limited basis. People in need of services may call Neighborhood Legal Services at 847-0650 and ask for the Kinship Hotline. Extensive information is available on line on the NYS Kinship Navigator, [www.nysnavigator.org](http://www.nysnavigator.org), including useful forms.