

CHOICES IN CUSTODIAL ARRANGEMENTS

Non DCF Custody Cases

People can assume responsibility for their grandchildren in different ways. What may start out as an informal arrangement, may at some point require formalized legal action.

The choice you make regarding a custody arrangement may also impact your grandchild's eligibility for certain benefits.

These are very complicated decisions, and it is critical to know what your options are. [TIP SHEET 1](#) focuses on families that are **NON DCF-custody cases**.

What are the various legal arrangements for my family to consider?

1. Guardianship
2. Adoption
3. Caregiver Authorization
4. Informal

Guardianship

For most grandparents or relative caregivers, the best way to secure legal custody is through guardianship. Guardianship will allow the grandparent the authority to make decisions on the care, education, health and welfare of the child. This formal custodial arrangement is done at the Probate and Family Court where the child lives.

Your responsibility as the petitioner is to show the court that the child's parent(s) are either unfit or unavailable to care for the child. This can be done with or without legal representation.

**Please see [TIP SHEET 2](#) for the Court Service Center and the Lawyer of the Day Program, providing information and assistance at no cost to you.*

Grandparents/relative caregivers may request a court appointed attorney on guardianship hearings **ONLY** after retaining custody of the child for 2 or more years and provide proof of indigency. The child **IS** entitled to an attorney; however, you will need to request that one be appointed.

To begin the process, you must file a set of documents with the Probate and Family Court. There is no fee for filing for guardianship of a minor. For more information on how to file for guardianship of a minor visit: <https://www.mass.gov/how-to/file-for-guardianship-of-a-minor>

If there is an immediate concern for the child's safety and well-being you may, in addition, file a motion for Temporary Guardianship to maintain custody until a full hearing is scheduled.

Once granted Temporary Guardianship, a hearing will be scheduled where you can request permanent guardianship. **Permanent guardianship is not permanent in a "forever" sense. At any time either of the parents can formally request through the court that the child be returned to their care after showing a change in circumstances.**

As the guardian of a minor, it is required that you complete an annual report and submit it to the Probate and Family Court. For a copy of this report visit: [Annual Report of Guardian of Minor \(MPC 443\) \(state.ma.us\)](#)

Adoption

Many grandparents consider adopting their grandchild. When you adopt a child, you take on the role of his/her parent. This may be a difficult decision to make for grandparents/relative caregivers since this legal status is permanent and cannot be reversed. An adoption terminates the parent(s) parental rights, therefore, giving finality to the relationship.

The adoption process is done at the Probate and Family Court where the child lives. To adopt a child, you will need the consent of both parents or you will have to prove that the parent(s) are unfit to care for the child. It is very important that an adoption be done correctly, therefore, legal representation is encouraged. For information on legal resources, please see [TIP SHEET 2](#).

Caregiver Authorization

The legislature passed a law that allows parents to sign a “Caregiver Authorization Affidavit.” This gives the caregiver of the child the right to make decisions about the child’s education and medical care while the parent maintains legal custody. This document must be signed and notarized by the parent. It is valid for up to 2 years but can be revoked by a parent at any time. If the parent(s) sign such an affidavit there is no need to go to court.

Parenting Time/Visitation

It is important for children to maintain contact with their biological parents if the contacts are safe and appropriate. There are various types of contacts/visitation to consider for children with biological parents including phone, in-person visits, supervised, etc. In guardianship cases, the judge will take numerous factors into consideration when ordering visitation between parents and a child.

Informal

Informal care refers to when you, as a grandparent/relative caregiver, are caring for your grandchild without any formal custody arrangement. It may be for a short or long period of time with the intention being the child’s parents will resume caretaking responsibilities when they are able to do so. In this situation you have no legal authority to make medical and/or educational decisions on behalf of the child in your care should the need arise. Similarly, if one of the child’s biological parents want to resume caretaking of the child and you are concerned that the child would be unsafe, you would have no legal authority to stop the parent from doing so.

ADDITIONAL RESOURCE: [Kinship Navigator](#) is a program of the Commonwealth of Massachusetts that assists all kinship caregivers (grandparents and other relatives) with accessing services for themselves and the children they are raising.

For more information please call 844-924-4546, or visit www.mass.gov/kinship-navigator

Scan QR Code to connect with a Kinship Navigator Staff Member directly via Zoom
9:00AM-12:00PM
Monday-Friday



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