

# What kind of custody arrangement is best for me?

## Introduction

People can assume responsibility for their grandchildren in many different ways. It may start as an informal arrangement. At some point, you decide that to protect your grandchild, you need to take legal action. It is also possible that you might be contacted by the Department of Children and Families (DCF) and urged to obtain custody of the children.

These are very complicated decisions, and it is critical to know what the options are. This tip sheet focuses on families that are not involved with DCF. If you are a grandparent or relative raising a child with DCF involvement, please take a look at Tip Sheet #4. The choice you make regarding a custody arrangement may also impact your grandchild's eligibility for certain benefits.

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

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

### Informal

Informal care refers to when you, as a grandparent/relative caregiver, are just caring for your grandchild. It may work for short periods and if you believe that the child's parents are able to properly care take care of the child the rest of the time. The down side is that you have no legal authority in these situations. If one of the parents comes back and wants to take the child and you conclude that the child would be unsafe, you have no right to stop the parent from doing that. Similarly, you would have no authority to make medical or educational decisions on the child's behalf.

### Guardianship

For most grandparents, the best way to secure legal custody where you (not the parent) have control is to seek guardianship in the Probate and Family Court. You will have to show the court that the child's parent(s) are either unfit or unavailable to care for the child. You should go to the Probate

and Family Court where your grandchild lives and fill out the necessary forms and the court will mark up your case for a hearing. If you are able to show that the parents are unfit or unavailable, the judge will grant you temporary custody.

If the judge awards you temporary custody, you will then need to make sure you have given notice to the child's parents. After that is done, you will need to return to the next court date and request continued custody. The judge may award you permanent guardianship at the 90 days hearing if you can show that the child's parents continue to be unfit or unavailable. This permanent guardianship is not really permanent in a "forever" sense because at any time either of the parents (or someone else for that matter) can go to court and file a motion to request that the child be returned to them. If you think it is not safe for the child to have visits with his/her parent(s) you will need to tell the judge. You could request that the judge order supervised visits, for example.

Grandparents/relative caregivers are not entitled to an attorney in these matters. You may request that the judge appoint an attorney for you on custody hearings, it is up to the judge's discretion and financial requirements. The child IS entitled to an attorney, however, you need to request an attorney be appointed for the child.

Many of the Probate and Family Courts do have a Court Service Center. Please visit [www.mass.gov](http://www.mass.gov) and type in "court service centers."

## Adoption

Many grandparents consider adopting their grandchild. If you adopt the child it is like you are his or parent. This means that the rights of the child's birth parents are permanently terminated and, in most cases, they will have no right to be in touch with the child, unless there is an open adoption. It is very important that an adoption be done correctly and you should therefore try to consult with a lawyer who can help you with this process.

To adopt a child, you will need the consent of both parents or you will have to prove that the parent(s) are unfit. This may be difficult for grandparents/relative caregivers to consider since this is a permanent legal status that cannot be reversed. An adoption does terminate the parent (s) parental rights, therefore, the gives finality to the relationship.

## Caregiver Authorization

A few years ago, the legislature passed a law that allows parents to sign a "Caregiver Authorization Affidavit." This gives another person, typically a grandparent, the right to make decisions about the child's education and medical care. It can be revoked by a parent at any time. This works well in situations where a parent needs help for a short time because, for example, a medical situation. 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 and visitation for children with biological parents including phone, in-person visits, supervised, etc. The judge takes numerous factors into consideration when ordering visitation between parents and a child.

Please see **Tip Sheet #8** on Visitation FAQs and Other Miscellaneous Items for information, tips, and suggestions on Visitation (coming soon).

## How to Find an Attorney that is Right for You

For information on legal resources, please see **Tip Sheet #3 Legal Resources for Grandparents and Relative Caregivers**.

Often grandparents and relative caregivers ask about finding an attorney to assist them in the various legal proceedings on behalf of their grand-family. Although the Commission cannot refer a family to a specific attorney, we can provide you with tips on finding an attorney that is right for you and your family. Please see **Tip Sheet #8** on Visitation FAQs and Other Miscellaneous Items for more information (coming soon).

**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 contact [kinshipnavigator@massmail.state.ma.us](mailto:kinshipnavigator@massmail.state.ma.us) or 844-924-4546, or visit [www.mass.gov/kinship-navigator](http://www.mass.gov/kinship-navigator)

**The Commission on the Status of Grandparents Raising Grandchildren** was established in 2008 to serve as a resource to the Commonwealth on issues affecting grandparents raising grandchildren and other relative grandchildren. The Commission works to provide information, resources, and support to the thousands of Massachusetts grandparents and relative caregivers by hosting community workshops, trainings, an annual conference, and maintaining an up to date website full of resources for caregivers. To receive newsletters from the Commission, or for more information, contact the Commission at [www.massgrg.com](http://www.massgrg.com). You can also contact the Director of the Commission at 617-748-2454 or e-mail [colleen.pritoni@state.ma.us](mailto:colleen.pritoni@state.ma.us).