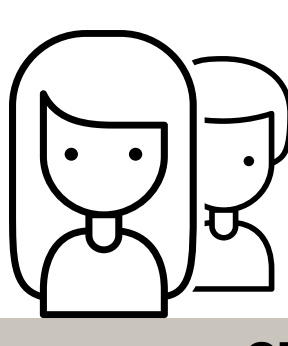
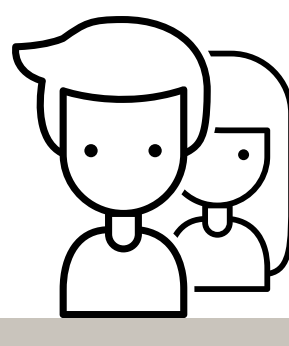


ADVISING IMMIGRANT FAMILIES: EMERGENCY CARE FOR CHILDREN



You can advise immigrant parents who are worried about being separated from their children to plan ahead by picking someone who they trust to care for their children. Creating a plan now can give parents more control over their future, and protect children from being placed into foster care.



This advisory discusses two options that are available in New York State: **Standby Guardianship** and **Designation of Person in Parental Relationship**.

STANDBY GUARDIANSHIP

VS

DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP

TIP

Both Standby Guardianship and Designation of a Person in Parental Relationship allow a parent to designate any person regardless of immigration status, do not supercede parent's rights, and can be revoked at any time. But there are important differences between these two options of which parents should be aware.

Standby Guardianship allows parents to pick a person who can be on "standby" as their child's guardian. The guardianship begins when a parent is subject to "administrative removal," which includes detention, deportation, or a notification of intent to deport from immigration authorities.

This provides a potentially permanent guardian, but requires a formal application to a Family or Surrogate Court judge.

Designation of Person in Parental Relationship allows parents to grant a person limited parental powers over educational and medical matters. The designation can be set up so that it's triggered by a specific event like the detention or deportation of a parent.

A Designation is less permanent than Standby Guardianship, but it can be set up without going to court.

Cite Family Court Act 661; Surrogate's Court Procedure Act 1704, 1726

Cite General Obligations Law 5-1551

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STANDBY GUARDIANSHIP

VS

DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP

Who can be a caretaker?

Any person who is approved by the Family Court or Surrogate's Court. However, individuals with prior felony convictions may only be approved if they obtain a certificate of relief from disabilities. For more information on how to obtain a certificate, visit the Legal Action Center.

Any person chosen by the parent can be designated.

IMPORTANT CONSIDERATIONS

PICKING A CARETAKER

Talk to the potential caretaker to make sure that they're willing to care for your children. A person's immigration status does NOT affect their ability to become a caretaker. However, if the person has been involved in the criminal legal system or child protective services, this history may stop a judge from appointing that person as a guardian.

TALK TO YOUR CHILDREN

If your children are old enough to understand, talk to them about your plans. Older children may have strong feelings about potential caretakers. Also, be aware that any child over the age of 14 will have to consent to a court-appointed guardian.

THE OTHER PARENT

If the other parent does not agree to the person you choose as a caretaker for your children, they can contest the appointment in court. If that happens, the other parent will win unless the proposed guardian can show "extraordinary circumstances" such as abandonment or abuse by the parent.

What power does it give the caretaker?

Once a court approves a standby guardian, that individual will have the full range of parental powers, including the ability to make educational and medical decisions.

A standby guardian should also have the ability to authorize travel, but airline policy about the documentation required may vary. However, the parents' rights will not be superseded by the guardian.

NOTE ON BENEFITS

An adult does not need to be a guardian or a designee in order to apply for government benefits for a child. Generally, adults need only show proof of address.

The designee will be able to make educational and medical decisions for the child. The parents' decision-making powers will not be superseded.

However, the designee:
 * Cannot authorize major medical treatment (e.g. surgery).
 * Cannot authorize travel.
 * Schools, hospitals and other institutions may be less willing to accept the authority of a designee than that of a court-appointed guardian.

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STANDBY GUARDIANSHIP

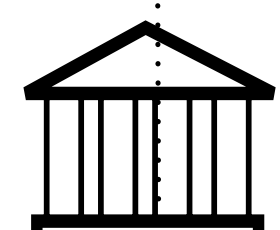
VS

DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP

Will you have to go to court?

Yes. The guardian must be approved by the Family or Surrogates Court. A judge will assess the background of the proposed guardian to determine if guardianship is in the "best interest" of the child. The court:

- May require fingerprinting of the proposed guardian and other adults in the home.
- Will check if the proposed guardian or other adults in the home have a criminal history and any prior involvement with child protective services.
- May order child protective services to visit and assess the caretaker's home.



No. Designation can be fully executed without going to court. It:

- Will not require fingerprinting of designee or other adults in the home.
- Will not require check of criminal history or child protective service records of designee or other adults in the home.

IMPORTANT CONSIDERATIONS

Court involvement can carry risks for citizens and noncitizens.

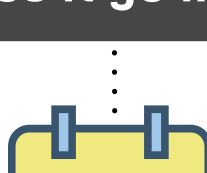
* Judges may require fingerprints, which in certain circumstances can put noncitizens at risk of ICE enforcement. For more, see the IDP/NYCLU Fingerprinting Advisory.

* Judges may also order child protective services to investigate a proposed guardian's home. If child protective services believes that there is abuse or neglect of a child living in the home, the proposed guardian may be subject to an investigation and further Family Court involvement.

When does it go into effect?

The guardianship becomes effective when there is an "administrative removal." This includes deportation, detention in an immigration facility, and receipt of a notice to appear in Immigration Court.

Once a guardian is approved by the court, there is no time limit to the guardianship.



The form can specify a "commencing event" such as the detention or deportation of a parent. If this is specified, the designation only becomes effective when that event occurs.

Designation is a temporary arrangement that is limited to 12 months. Although the designation can be renewed indefinitely past the 12 months, renewal requires the parent to execute a new document.

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HOW-TO GUIDE

STANDBY GUARDIANSHIP FORM

Fill out form designating a Standby Guardian. Parent and two witnesses must sign.

"Administrative removal" occurs. Standby guardianship form goes into effect.

Within 60 days of "administrative removal," the standby guardian must submit petition to Family or Surrogate's Court with evidence of the "removal."

Family or Surrogate's court holds guardianship hearing to determine if appointment is in "best interest" of the child.

Family or Surrogate's Court issues guardianship order.

STANDBY GUARDIANSHIP COURT

Submit petition to Family or Surrogate's Court. Parent must sign and notarize.

Family or Surrogate's court holds guardianship hearing to determine if appointment is in "best interest" of the child.

"Administrative removal" occurs.

Within 60 days of "administrative removal" the standby guardian must submit evidence of the "removal."

Family or Surrogate's Court issues guardianship order.

DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP FORM

Fill out form designating person in parental relationship. Parent and designee must sign and notarize.

Form should specify "commencing event" such as detention or deportation AND specify duration of designation (max. 1 year).

"Commencing event" occurs. Designation of Person in Parental Relationship Form goes into effect.

Form will expire within one year of the commencing event (unless an earlier date is specified).

The designation can be renewed indefinitely by executing a new agreement.

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