



Emergency Planning Guide for Parents with Uncertain Immigration Status

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Introduction

Parents with uncertain immigration status may be concerned about the care and custody of their children in the event of sudden detention or deportation by federal immigration officials. The following are legal options that a parent might want to consider for a child who would remain in the United States in the event of parental detention or deportation.

Deciding whether one of these options is the right choice for a particular family will depend on the circumstances of that family. For example, if a parent anticipates only a short separation from a child, the caregiver authorization or temporary agent authorization might make the most sense. If the separation is likely to be long-term or the caregiver would take the child to live in a different state, the additional legal protections of a guardianship may be preferable. Each of these is discussed in more detail below.

For each option, the parent may want to prepare the necessary forms in advance so that the parent, the child, and the person who will care for the child will be ready if the need arises.

Caregiver Authorization

Who is a caregiver?

A caregiver can make medical and educational decisions for a child on a parent's behalf, but does not have full authority to act as a parent. The parent does not give up custody or parental rights. In other words, the parent has the final say over the child. Authorization of a caregiver lasts two years and then must be renewed.

What Is the Process for Authorizing a Caregiver?

- 1) Caregiver Authorization Affidavit: The parent should complete the first page of the Caregiver Authorization Affidavit form and sign it in front of two witnesses (apart from the caregiver) and a notary (generally available at banks). The witnesses, caregiver, and notary must also sign the form.
- 2) Delivery of Affidavit: The caregiver should send a copy of the completed Affidavit to the child's school and medical personnel (like doctors and dentists) if and when the child is in his or her care. The caregiver should keep the original Affidavit and the parent should keep a copy.
- 3) Cancellation: To cancel the arrangement, the parent should send a signed and dated letter to the caregiver cancelling the caregiver authorization. Both the parent and the caregiver should forward that letter to the school and medical personnel.
- 4) Renewal/Amendment: A caregiver authorization is valid for two years, after which the parent and the caregiver must complete a new authorization. A caregiver authorization can also be amended at any time by filling out a new authorization.

Caregiver Authorization Affidavit Form:

<http://www.masslegalhelp.org/immigration/caregiver-authorization-w-alternate.docx>

Legal Reference: *M.G.L. Ch. 201F*

Temporary Agent Authorization

Who is a temporary agent?

Temporary agents are similar to caregivers but have broader authority over the child for a shorter period of time. A temporary agent can act as the parent in almost every way, but the agent cannot consent to marriage and adoption. A parent can also restrict the authority of the agent. This authorization lasts 60 days and then must be renewed.

What is the Process for Authorizing a Temporary Agent?

The process is nearly identical to caregiver authorization, but a parent would also need the consent of the second parent, if that parent may be willing and able to provide care and his/her whereabouts are known

Sample Temporary Agent Authorization Form

<http://www.masslegalhelp.org/immigration/temporary-agent-affidavit-w-alternate-agent.docx>

Legal Reference: M.G.L. Ch. 190B Article V §§ 5-103

Guardianship of a Minor

Who is a guardian?

Guardians are appointed by a court to make all legal decisions for a child just as a parent would. A guardian generally has physical and legal custody of the child, so parents can no longer make decisions for the child unless the guardianship ends. Guardianship can be temporary (lasting 90 days) or permanent (lasting until the child turns 18 or for another time-period specified by the court), though a court can always terminate a guardianship if the court thinks it's in the best interests of the child.

What Is the Process for Appointing a Guardian?

The Probate and Family Court may appoint a guardian under a variety of circumstances, including if all living parent(s) consent to the guardianship or if the court finds that the parent(s) are unfit or unavailable to have custody. Anyone can petition the court to appoint a guardian, including the parent, the intended guardian, or the child. Then the court holds a hearing to determine if the guardian should be appointed.

Consenting ahead of time:

To establish consent to a guardianship, all legal parents should prepare a Notarized Waiver and Consent to Petition for Guardianship, have it notarized, and give it to the person intended to be the guardian. Then, if and when the guardianship is needed, an intended guardian can file this form along with a Petition for Appointment of Guardian with the Probate and Family Court.

If a parent is already unavailable:

If the parent is not able to prepare the consent form in advance of detention or deportation, the intended guardian (or another interested individual) may file a Petition for Appointment of Guardian indicating that the parent(s) are unavailable.

Temporary guardianship:

The petitioner may also want to file a Motion for Appointment of Temporary Guardian. An expedited temporary guardianship (lasting up to 90 days) may be appropriate to ensure stability for the child while permanent guardianship is established.

If a child is 14 or older:

If a child is at least 14 years old, the court will generally respect his/her wishes as to who should be appointed as guardian. A child who is at least 14 should nominate a guardian with the Notarized and Verified Consent or Nomination by Minor to file with the Petition for Appointment of Guardian. The parent may want to have a candid conversation with the child about this, so that the child is prepared to nominate a guardian or can prepare the document ahead of time.

Terminating a guardianship:

To terminate a guardianship, the parent (or someone) would have to go back to the court to file a Petition for Removal of a Guardian of a Minor or the guardian could file a Petition to Resign as Guardian of a Minor.

Forms

<http://www.mass.gov/courts/forms/pfc/pfc-upc-forms-generic.html#2>

Legal Reference:

M.G.L. Ch. 190B Article V §§ 5-204, 5-206 and 5-207

Side-by-Side Comparison of Care & Custody Options

| | Caregiver Authorization | Temporary Agent Author |
|---------------------------|---|--|
| Authority of caregiver | Limited: only medical and educational decisions for the child | Broader: same as the parent for the ability to consent to marriage and adoption (can be further restricted) |
| Authority of parent | Retain parental rights and legal custody (have final say) | Retain parental rights and legal custody (have final say) |
| Duration | 2 years (renewable) | 60 days (renewable) |
| Court involvement | <ul style="list-style-type: none"> • No court involvement • Parent makes decisions about who the caregiver will be • Parent can amend/cancel at will | <ul style="list-style-type: none"> • No court involvement • Parent makes decisions about who the caregiver will be • Parent can amend/cancel at will |
| Second Parent Involvement | Does not require consent of the second parent | Requires consent of a second parent who may be willing and able to provide care if whereabouts are known |
| Process | <ol style="list-style-type: none"> 1. Complete the Caregiver Authorization Affidavit 2. Make sure the caregiver has the original document so it can be used when needed | <ol style="list-style-type: none"> 1. Complete the Temporary Agent Affidavit 2. Receive consent of non-appointing parent (if applicable) 3. Make sure the agent has the original document so it can be used when needed |

| Situations | Guardianship |
|--|---|
| Except marriage | Even broader: Same as the parent |
| Legal | None once the guardianship is confirmed, unless guardianship is limited or custody is regained through the court |
| | <p>Permanent guardianship: For as long as the Court appoints the guardian (can be until the minor's 18th birthday)</p> <p>Temporary guardianship: Up to 90 days (renewable)</p> |
| About at will | <ul style="list-style-type: none"> • Court is involved • Court makes decisions about who the caregiver will be (but often respects the wishes of consenting parent) • Court must approve amendments/cancelation • Child entitled to a court-appointed lawyer (once petition is filed) • Parent entitled to a court-appointed lawyer (once petition is filed) |
| and able are | Requires either consent of a second legal parent or a finding that the parent is unfit or unavailable |
| Agent (applicable) the can be | <ul style="list-style-type: none"> • Parent(s) complete and notarize waiver and consent form ahead of time; If child is at least 14, he or she should complete a notarized and verified consent and nomination form • When you wish to make the guardianship official, intended guardian (or someone else) petitions the court to appoint a guardian <p>OR</p> <ul style="list-style-type: none"> • If forms can't be completed in time, intended guardian (or someone else) may file a petition indicating that the parent(s) are unavailable |

How a Custody Arrangement Could Impact a Child's Access to Benefits

In thinking through **who** would care for a child and **what type** of caretaking arrangement would be best if a parent becomes unavailable, the benefits a child is or might be eligible for might be relevant; different types of caretakers are legally authorized to collect different kinds of benefits.

Social Security Benefits (Including Survivor's Benefits and Supplemental Security Income (SSI))

- Caregiver must be selected as a Representative Payee to collect benefits for the child
 - At the discretion of the Social Security Administration
 - Parents or guardians given priority (even if they don't have custody) over other caregivers
 - People with certain types of criminal records cannot be Representative Payees

Transitional Aid to Families with Dependent Children (TAFDC)

- To be eligible, child must live with a relative (by blood, marriage or adoption)

Emergency Aid to Elders, Disabled, and Children (EAEDC)

- To be eligible, child must live with someone who is not a relative (and therefore be ineligible for TAFDC)
- Caregiver must have legal custody or guardianship unless obtaining guardianship or custody would put the caregiver or child "at risk of serious harm or emotional impairment"

Supplemental Nutritional Assistance Program (SNAP)

- Benefits are determined by who lives in the household
- Minor child is considered in the same household as a non-parent who lives with the child and provides him/her with financial support and/or supervision

Early Education and Care (EEC) Childcare Vouchers

- A parent or any caregiver who lives with, supervises, and cares for a child whose parents do not live in the home can receive child care vouchers for which the family is eligible.

Checklist of Documents to Make Available

Depending on the plan for a particular child, a parent may want to make sure that critical documents for the care and custody of that child are in one place and available to the child and his/her intended caregiver if and when they are needed. Documents to consider include:

- Caregiver Authorization; or
 - Temporary Agent Authorization; or
 - Guardianship Documents, including:
 - Notarized Waiver and Consent to Petition for Guardianship
 - Notarized and Verified Consent or Nomination by Minor (if child is 14 or older)
-
- Passport
 - Birth Certificate
 - Social Security Card or Individual Taxpayer Identification Number
 - Immigration documents
 - Paperwork related to custody of the child
 - Financial account information
 - Records of real or personal property
 - Records related to state or federal benefits programs (including Social Security, TAFDC, EAEDC, SNAP, and EEC)
 - Insurance policies (including health insurance and life insurance)
 - Medical records
 - School records
 - Important contact information (including school, doctor, and family members)

Resources

The following are resources that parents may find helpful as they think through methods of arranging care for children in the face of detention or deportation.

General Information

- Mass Legal Help's Guide to Planning for a Family Emergency: <http://www.masslegalhelp.org/immigration/family-emergency>
- Court guides for relative caregivers with a list of helpful resources depending on location of residence in Massachusetts: <http://www.mass.gov/courts/selfhelp/guardians/guide-relative-caregivers.html>
- 2014 toolkit titled *Detained or Deported: What about my children?* by the Women's Refugee Commission: <https://www.womensrefugeecommission.org/rights/resources/1022-detained-or-deported-parental-toolkit-english-interactive>

Legal Assistance

- List of legal assistance that may be available through the Probate and Family Court: <http://www.mass.gov/courts/selfhelp/guardians/guardianship-help.html>
- Information about access to a court-appointed lawyer as a parent to a guardianship case (in case a parent decides to pursue the guardianship path prior to deportation): <http://www.masslegalhelp.org/children-and-families/guardianship/parents-right-to-lawyer>



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