

Emergency Preparedness for Families Affected by the Executive Orders on Immigration

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The information contained herein is for educational purposes only. It does not, and is not intended to, constitute legal advice.

Family Preparedness for those Affected by the
Executive Orders on Immigration

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Family Preparedness for those Affected by the Executive Orders on Immigration

This guide provides information on childcare options available in New York State and might be helpful to those who want to plan for the care of their children in the event they are detained or deported. The chart below outlines options and the following pages contain brief descriptions as well as some relevant laws and forms for each option.

In the short term, designation of a person in parental relation is one way to plan for the immediate needs of children (and is renewable every six months). Parents may want to consider longer-term options, such as guardianship (of the child and/or the child's property), custody, or in certain circumstances, voluntary foster care.

Parents with serious medical problems may be able to make use of the standby guardianship option, which provides for a caretaker in the event the medical condition becomes debilitating or the parent dies (but which is not currently available solely upon detention or deportation).

Power of Attorney can be used for the principal's property.

FAMILY PREPAREDNESS OPTIONS

	Designation of a Person in Parental Relation	Guardianship	Custody	Standby Guardianship	Power of Attorney	Foster Care
Short/long term	Short term (up to 6 months; renewable)	Long term (after final order is issued)	Long term (after final order is issued)	Long term (after final order is issued-but medical necessity required)	Both	Both (potential risks of termination of parental rights)
Education decisions	Yes	Yes	Yes	Yes	No	Yes
Major medical decisions	Limited authority	Yes	Yes	Yes	No	Yes
Requires court intervention	No	Yes	Yes	Nearly always	No	Nearly always
Property/care of children	Children	Both (only child if filed in Family Court; property of child and/or child if filed in Surrogates Court)	Children	Both (only child if filed in Family Court; property of child and/or child if filed in Surrogates Court)	Property of principal	Children

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Designation of a Person in Parental Relation

Designation of a person in parental relationship is one way parents can plan for their children in the event they are detained or deported in the future. Pursuant to New York State General Obligations Law § 5-1551 - 1555, the parent of a minor child may designate another person as a person in parental relation to such child for certain health and education purposes.

The form allows the parent to designate another person to make medical and educational decisions for the children as described under New York Public Health Law § 2164 and § 2504 as well as New York Education Law § 3212. The designee cannot give consent for surgery or other major medical decisions as described under New York Public Health Law § 2504 and New York Mental Hygiene Law § 80.03. The parent retains all parental rights with this authorization and can cancel it at any time. The children need not change school districts if the person lives in another school district. Note that the authorization is only valid for up to six months, though it can be renewed.

The designee must agree to the designation. If there is a court order that requires both parents to agree on education and/or health decisions regarding the children, then both parents must sign the form. If not, only one parent's signature is required. Additionally, if the form is to be valid for more than 30 days, all signatures must be notarized.

Attachments:

- New York State Office of Children and Family Services – Designation of Person in Parental Relationship
- New York State Office of Children and Family Services – Designation of Person in Parental Relationship IN SPANISH
- New York General Obligations Law §§ 5-1551-1555
- New York Public Health Law §§ 2164, 2504
- New York Mental Hygiene Law § 80.03
- New York Education Law § 3212

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES
DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP
Pursuant to section 5-1551 of the New York State General Obligations Law.

1. I, _____, hereby state that I am the parent of the child/children/incapacitated person(s) named below and there are no Court Orders now in effect in any jurisdiction that would prohibit me from exercising the power that I now seek to authorize.

2. The address and telephone number(s) where I can be reached while this designation is in effect is:

Address: _____

Telephone: Home () _____; Work () _____

Other () _____

3. I am temporarily entrusting _____, a person over the age of eighteen who resides at _____, _____, New York, telephone number () _____, the care of the following child/children/incapacitated person(s):

_____ {NAME} date of birth _____

_____ {NAME} date of birth _____

_____ {NAME} date of birth _____

_____ {NAME} date of birth _____

4. Any authority granted to the person in parental relationship pursuant to this form shall be valid (check appropriate box and initial):

_____ a. for six months days from the date of signature of this designation, or until the date of revocation, whichever occurs first (must include all parties addresses and telephone numbers and be signed by all parties in the presence of a notary public), or

_____ b. for thirty days from the date of signature of this designation, or until the date of revocation, whichever occurs first, or

_____ c. from _____ (date) until and including _____ (date), or until the date of revocation, whichever occurs first; or

_____ d. commencing upon _____ (state event) and continuing until _____, or until the date of revocation, whichever occurs first.

5. As to the above named child/children/incapacitated person(s), the person in parental relationship named above is authorized to:
(cross out and initial any that do not apply)

- a. review school records;
- b. enroll in school;
- c. excuse absences from school;
- d. consent to participation in school program and/or school-sponsored activity;
- e. consent to school-related medical care;*
- f. enroll in health plans;
- g. consent to immunizations;*
- h. consent to general health care;*
- i. consent to medical procedures;*
- j. consent to dental care;
- k. consent to developmental screening; and/or
- l. consent to mental health examination and/or treatment.

* Except as prohibited by Section 2504 of the Public Health Law

Any of the above authorizations may be further limited by conditions defined by the parent, and, if limited, the limitations are written below (e.g., the parent may grant the authority to consent to a mental health examination, subject to the condition that they cannot be reached by telephone or other electronic means).

6. I further authorize the person in parental relationship to request, receive and review, and be granted full and unlimited access to, and obtain complete unredacted copies of any and all of health, medical, financial information and/or any information and/or records as defined in 45 CFR. §164.501 and regulated by the Standards for Privacy of Individually Identifiable Health Information found in 65 Fed. Reg. 82462 as protected private records or otherwise covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, for each child/incapacitated person listed in paragraph 3 above. I understand that the information contained in such health and medical records may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC) and human immunodeficiency virus (HIV), behavioral or mental health services, treatment for alcohol and/or drug abuse and/or addiction. I further understand that I may have access to and/or receive an accounting of the information to be used or disclosed as provided in 45 CFR §164.524, et seq. I further understand that authorizing the disclosure of this health information is voluntary; that I can refuse to sign this authorization. I further understand that any disclosure of this information carries with it the potential for an unauthorized further disclosure of this information by third parties and that such further disclosure may not be protected under HIPAA. In order to induce the disclosing party to disclose the aforesaid private and/or protected confidential information, I forever release and hold harmless said disclosing party who relies upon this instrument from any liability under confidentiality rules arising under HIPAA as a consequence of said disclosure

7. NOTICE TO PARENTS AND PERSONS IN PARENTAL RELATION: Authorization pursuant to this form is valid until the earlier of revocation by a parent or the date specified in paragraph 4 above. Any parent having signed this designation may revoke such authorization at will, and may notify relevant schools and health care providers of such revocation. A person in parental relation who receives notification from a parent of such revocation, shall forthwith notify any school, health care provider or health plan to which an authorization pursuant to this subdivision has been presented. Failure by the person in parental relation to notify recipients of the authorization or the revocation shall not make notification of revocation by the parent ineffective.

This authorization is temporary, but may be renewed by the parent(s). However, parents and persons in parental relation involved in a long-term care giving arrangement may seek a more permanent legal arrangement by commencing a judicial proceeding to appoint legal guardianship or to determine custody.

Note: All signatures below must be notarized if authorization is for a period exceeding 30 days

Dated:

(Parent signature) _____

Sworn to before me this

_____ day of _____ 20_____.

Notary Public

8. I, _____, am also the parent of the child/children/incapacitated person(s) named herein, there is a Court Order directing that both parents must agree on education and/or health decisions concerning such child/children/incapacitated person(s), and I hereby consent to this designation by my signature below.

The address and telephone number(s) where I can be reached while this designation is in effect is:

Address: _____

Telephone: Home () _____; Work () _____

Other () _____.

Dated:

(Parent signature) _____

Sworn to before me this

_____ day of _____ 20_____.

Notary Public

9. I, _____, the person designated in parental relationship for the child/children/incapacitated person(s) named herein, hereby consent to this designation by my signature below.

Dated:

(Signature) _____

Sworn to before me this

_____ day of _____ 20_____.

Notary Public

Instructions for DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP, pursuant to section 5-1551 of the New York State General Obligations Law.

PURPOSE OF THIS FORM:

This form will allow you to designate another person to make medical and educational decisions for your child(ren) or incapacitated person(s) in your care if you can't do so yourself for a specific period of time. This authorization can only be used for a period of up to six months. If you will need to have your child(ren)/incapacitated person(s) in the care of someone else for more than six months, you may wish to consider other options.

If there is a Court order that requires both parents to agree on education and/or health decisions regarding the child(ren), then both parents must sign the form. If not, only one parent's signature is required.

You keep all of your parental rights with this authorization and can cancel (revoke) this authorization at any time. The person you designate will be able to talk with your child(ren)'s school, teachers and medical providers, and will be able to make routine decisions. The person you designate will not be able to give consent for surgery or other major medical procedures but will be able give consent for routine medical matters. If you do not want the person you designate to be able to make certain decisions, such as decisions concerning immunizations, you can specify that with this form. If the person you designate makes a decision concerning your child(ren)/incapacitated person(s) that you do not agree with, you can override that decision.

The person designated must agree to be "a person in parental authority," and will not be required to assume responsibility for financial support of the child(ren)/incapacitated person(s). Your child(ren) will not have to change their school district if that person resides in another school district. In the event of your death or incapacitation, this designation automatically terminates.

INSTRUCTIONS FOR USING THIS FORM:

Paragraph 1: Fill in your full legal name in the space provided. If there is a Court order in effect that requires both parents to sign, the other parent will fill in their name in the space provided in Paragraph 7.

Paragraph 2: Fill in your address and telephone number(s). If this information is not included, the authorization will not be valid for more than thirty days. Use the address where you will be staying during the period this authorization is in effect, even if it is not your legal residence. For example, if this authorization is to be used while you are hospitalized, you would use the hospital's address.

Paragraph 3: Fill in the name, address, and telephone number of the person whom you wish to designate as able to make educational and/or health decisions for your child(ren)/incapacitated person(s). Fill in the name(s) and date(s) of birth for EACH child/incapacitated person.

Paragraph 4: Specify how long you wish this authorization to be in effect by checking the appropriate box and initialing next to it. Remember, you can always revoke (cancel) this designation sooner if you wish. Information about how to do that is included toward the end of these instructions.

- **Use (a)** if you want this designation to be valid for six months. If you choose this option, you must provide the address and telephone number for the parent(s) and the other person, and all the signatures must be notarized.

- **Use (b)** if you want this designation to be valid for thirty days. You do not have to include addresses and telephone numbers with this choice, but it is suggested that you do so in the event that medical or educational care providers need to contact you.

- **Use (c)** if you want to use specific dates, for a period of less than or more than thirty days. Remember, this designation cannot be used for more than six months, and you must include addresses, telephone numbers, and notarized signatures if you want it to be good for more than thirty days.

- **Use (d)** if you want this designation to begin when something specific, such as in the event you are hospitalized. For this, you write the specific event in the first space provided (example: "When I am admitted to a hospital") and write the date or the event upon which the designation should expire in the second space (example: "thirty days later" or "when I am released from the hospital"). Again, you must include addresses, telephone numbers, and notarized signatures if you want it to be good for more than thirty days.

Paragraph 5: List each of the things you wish the person you designate to be able to do. Cross out and initial EACH item that you do NOT wish to allow the person you designate to perform. If there are other things you want to prevent the person from doing, use the blank lines below the list to write those down. For example, if you want to be contacted before any mental health examination is performed, you can write that in the space provided.

Paragraph 6: This paragraph allows the person you designated to have access to your child(ren)'s/incapacitated person(s)' medical records and medical information.

Paragraph 7: This provides some information regarding this form. The parent whose name appears in Paragraph 1 then signs and dates the form. If this authorization is to be in effect for a period of more than thirty days, the signature must be notarized. In this case, you need to take the form to a notary public before you sign it, and sign the form in front of that notary public, who will then also sign the form to indicate that they witnessed your signature. If don't do this, the authorization will automatically expire after thirty days.

Paragraph 8: If there is a Court order in effect that requires both parents to agree on education and/or health decisions regarding the child(ren), then the other parent will fill in their full legal name, address, and telephone number in the spaces provided. As with the first parent, they do not have to provide their address and telephone number if the authorization is for a period of thirty days or less, but may wish to. They must provide this information, and sign the form in front of a notary public, if the authorization is to be good for more than thirty days. If there is no Court order in effect that requires both parents to agree, you can leave this paragraph blank.

Paragraph 9: Fill in the full legal name of the person to be designated "in parental relationship" to the child(ren)/incapacitated person(s). They then sign and date the form, to show that they agree to be a person in parental relationship. If this authorization is to be good for more than thirty days, they will also need to sign the form in front of a notary public.

OTHER INFORMATION:

- Major medical treatment: The person you designate **CANNOT** give consent for "major medical treatment" which is any medical, surgical, or diagnostic intervention or procedure where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation, or having a significant recovery period. This does not include: any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; electroconvulsive therapy; dental care performed with a local anesthetic; any procedures which are provided under emergency circumstances, pursuant to section twenty-five hundred four of the public health law; the withdrawal or discontinuance of medical treatment which is sustaining life functions; or sterilization or the termination of a pregnancy.

For example, the person designated can give consent for a child/incapacitated person to have standard dental procedures, such as fillings, but not dental surgery where they would be unconscious during the procedure, such as having their wisdom teeth extracted. A parent's consent will still be required for major medical procedures.

- Revoking this designation: In order to revoke (cancel) the authorization, you simply have to tell the person you designated that you wish to do so, and they are required to notify the appropriate education and medical providers that the authorization has been terminated. While the parent is not required to do this in writing, or to notify the child(ren)/incapacitated person(s) education and medical providers that they have revoked the authorization, they may want to, so that there is no confusion. If two parents signed the form, either parent can cancel the designation by themselves, you do not need both parents.

NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES

DESIGNACIÓN DE UNA PERSONA EN UNA RELACIÓN PATERNAL/MATERNAL

De acuerdo con la Sección 5-1551 de la Ley de Obligaciones Generales del Estado de Nueva York
(*New York State General Obligations Law*)

1. Yo, _____, por la presente declaro que soy el padre/madre del niño(a)/niños(as)/persona(s) discapacitada(s) mencionada(s) a continuación y que no existe hasta la fecha una Orden Judicial en vigencia en ninguna jurisdicción que me prohíba ejercer la autoridad que ahora exijo ejercer.

2. El domicilio y el/los número(s) de teléfono(s) donde se me puede ubicar mientras esta designación esté en vigencia es/son:

Domicilio: _____

Teléfono: Particular () _____; Trabajo () _____
(Otro) _____

3. Temporalmente otorgo a _____, persona mayor de dieciocho años de edad que reside en _____, Nueva York, número de teléfono () _____, el cuidado del siguiente niño(a)/niños(as)/persona(s) discapacitada(s):

- _____ {NOMBRE} fecha de nacimiento _____
- _____ {NOMBRE} fecha de nacimiento _____
- _____ {NOMBRE} fecha de nacimiento _____
- _____ {NOMBRE} fecha de nacimiento _____

4. Toda autoridad otorgada a la persona en una relación paternal/maternal en virtud de este formulario tendrá validez (marque la casilla apropiada y coloque sus iniciales):

- _____ a. durante seis meses desde la fecha de la firma de esta designación o hasta la fecha de la revocación, lo que ocurra primero (debe incluir los domicilios y los números de teléfono de todas las partes, y todas las partes deben firmar ante la presencia de un notario público); o
- _____ b. durante treinta días desde la fecha de la firma de esta designación o hasta la fecha de la revocación, lo que ocurra primero; o
- _____ c. desde _____ (fecha) hasta e inclusive _____ (fecha) o hasta la fecha de la revocación, lo que ocurra primero; o
- _____ d. a partir de _____

(indique el evento) y continuará hasta _____ o hasta la fecha de la revocación, lo que ocurra primero.

5. En lo que respecta al niño(a)/niños(s)/persona(s) discapacitada(s) mencionada(s) previamente, la persona designada en una relación paternal/maternal tiene la autoridad para: (tache y coloque sus iniciales en cualquier apartado que no corresponda)

- a. revisar los registros escolares;
- b. realizar inscripciones en la escuela;
- c. excusar inasistencias escolares;
- d. autorizar la participación en programas escolares y/o actividades patrocinadas por la escuela;
- e. autorizar la atención médica relacionada con la escuela*;
- f. realizar inscripciones en planes médicos;
- g. autorizar inmunizaciones*;
- h. autorizar la atención médica general*;
- i. autorizar procedimientos médicos*;
- j. autorizar la atención dental;
- k. autorizar evaluaciones de desarrollo; y/o
- l. autorizar un examen de salud mental y/o tratamiento

*Excepto lo que se prohíba de acuerdo con la Sección 2504 de la Ley de Salud Pública.

Cualquiera de las autorizaciones previas puede estar sujeta a limitaciones adicionales, conforme a condiciones estipuladas por el padre/madre, y, en caso de limitarse la autoridad, las limitaciones se indicarán a continuación (por ej. el padre/madre puede otorgar la autorización para un examen de salud mental, sujeto a la condición de que no se le contacte por teléfono o por otros medios electrónicos).

6. Además, yo autorizo a la persona en una relación paternal/maternal a solicitar, recibir y revisar, y a tener acceso pleno e ilimitado, y a obtener copias completas no redactadas de todo y cualesquiera información de salud, médica, financiera y/o cualesquiera información y/o registros según se define en 45 CFR. § 164.501 y regulado por los Estándares de Privacidad de la Información Médica Identificable Individualmente (*Standards for Privacy of Individually Identifiable Health Information*) que aparece en la Reg. Fed. 65 82462 como registros privados protegidos o de otro modo cubiertos bajo la Ley de Portabilidad y Responsabilidad de Seguro Médico de 1996 (*Health Insurance Portability and Accountability Act—HIPAA*), Ley Pública 104-191, por cada niño(a)/persona discapacitada enumerada en el párrafo 3 precedente. Entiendo que la información que aparece en dichos registros médicos y de salud puede incluir información pertinente a enfermedades de transmisión sexual, síndrome de inmunodeficiencia adquirida (SIDA), complejo relacionado con el SIDA (ARC) y el virus de inmunodeficiencia humano (VIH), servicios por trastornos de conducta o salud mental, tratamiento por alcoholismo y/o abuso de drogas y/o adicción. Asimismo entiendo que puedo tener acceso a y/o recibir una reseña de la información a ser utilizada o divulgada según se dispone en 45 CFR § 164.524, et seq. Asimismo entiendo que autorizar la divulgación de esta información médica es un acto voluntario, y que puedo rehusarme a firmar esta autorización. Asimismo entiendo que cualquier divulgación de esta información conlleva el potencial de una divulgación no autorizada de esta información por parte de terceros, y que dicha divulgación puede no estar protegida bajo la HIPAA. A fin de inducir a la parte reveladora a divulgar la información privada y/o confidencial previamente mencionada, eximo o excuso para siempre a dicha parte reveladora, quien se basa en este instrumento, de cualesquiera responsabilidad u obligación que pudiera surgir en virtud del reglamento de confidencialidad conforme a la HIPAA a causa de dicha divulgación.

7. NOTIFICACIÓN A LOS PADRES Y PERSONAS EN UNA RELACIÓN PATERNAL/MATERNAL: La autorización de acuerdo con este formulario es válida hasta lo que ocurra primero: la revocación por parte del padre/madre o la fecha especificada en el párrafo 4 precedente. El padre/madre que firmó esta designación podrá revocarla a voluntad, y podrá notificar a las escuelas pertinentes y a los proveedores de atención médica sobre dicha revocación. Una persona en una relación paternal/maternal que reciba notificación de un padre/madre sobre tal revocación deberá notificar a las escuelas, a los proveedores de atención médica o a los planes médicos ante quienes se presentó una autorización en virtud de esta subdivisión. En la eventualidad de que la persona en una relación paternal/maternal no notifique a los destinatarios sobre la autorización o la revocación, esto no anulará la efectividad de la notificación de revocación por parte de los padres.

Esta autorización es temporal, pero puede ser renovada por los padres. No obstante, los padres y las personas en una relación paternal/maternal involucrados en un acuerdo de cuidado a largo plazo pueden procurar un acuerdo legal más permanente iniciando un procedimiento judicial para designar un tutor(a) legal o determinar la custodia.

Nota: Todas las firmas a continuación se deben autenticar si la autorización es por un período que excede los 30 días

Fecha:

(Firma del padre/madre) _____

Juramentado ante mí este

___ día de _____ 20__.

Notario Público

8. Yo, _____, soy también el padre/madre del niño(a)/niños(as)/persona(s) discapacitada(s) mencionada(s) en la presente, reconozco que existe también una Orden Judicial que indica que ambos padres deben estar de acuerdo con las decisiones sobre la educación y/o la salud relacionadas con dicho niño(s)/niños(as)/persona(s) discapacitada(s) y por la presente acepto esta designación mediante mi firma que estampo a continuación.

El domicilio y el/los número(s) de teléfono(s) en los que se me puede ubicar mientras esta designación esté en vigencia es/son:

Domicilio: _____

Teléfono: Particular () _____; Trabajo () _____

Otro () _____

Fecha:

(Firma del padre/madre) _____

Juramentado ante mí este

___ día de _____ 20__.

Notario Público

9. Yo, _____, la persona designada en una relación paternal/maternal para el niño(a)/niños(as)/persona(s) discapacitada(s) mencionadas en el presente formulario, acepto esta designación mediante mi firma que estampo a continuación.

Fecha:

(Firma) _____

Juramentado ante mí

___ día de _____ 20__.

Notario Público

Instrucciones para la DESIGNACIÓN DE UNA PERSONA EN UNA RELACIÓN PATERNAL/MATERNAL, de acuerdo con la Sección 5-1551 de la Ley de Obligaciones Generales del Estado de Nueva York (*New York State General Obligations Law*).

OBJETIVO DE ESTE FORMULARIO:

Este formulario le permite designar a otra persona para que tome decisiones médicas y educacionales para su hijo(a)/hijos(as) o persona(s) discapacitada(s) bajo su cuidado si usted no puede hacerlo por sí mismo(a) durante un período de tiempo específico. Esta autorización sólo se puede usar por un período de hasta seis meses. Si usted necesita que su hijo(a)/hijos(as)/persona(s) discapacitada(s) estén bajo el cuidado de otra persona durante más de seis meses, quizás desee considerar otras opciones.

Si existe una Orden Judicial que exija que ambos padres estén de acuerdo con respecto a las decisiones sobre educación y/o salud de sus hijos, entonces ambos padres deben firmar este formulario. En caso contrario, sólo se requiere la firma del padre/madre.

Usted conserva todos sus derechos paternales/maternales con esta autorización, y puede cancelar (revocar) esta autorización en cualquier momento. La persona que usted designe tendrá la autoridad para hablar con el personal de la escuela que atienda a su(s) hijo(s), maestros y proveedores de atención médica y podrá tomar decisiones de rutina. La persona que usted designe no podrá autorizar una cirugía u otro procedimiento médico importante, pero podrá autorizar asuntos médicos de rutina. Si usted no quiere que la persona que designe esté autorizada para tomar ciertas decisiones, como por ejemplo decisiones sobre vacunación, puede especificarlo en el formulario. Si la persona que usted designe toma una decisión con respecto a su hijo(a)/hijos(as)/persona(s) discapacitada(s) con la que usted no está de acuerdo, puede anular dicha decisión.

La persona que usted designe debe aceptar ser una "persona con autoridad paternal/maternal", y no estará obligada a asumir responsabilidad por la manutención financiera del niño(a)/niños(as)/persona(s) discapacitada(s). Su hijo(a)/hijos(as) no tendrá(n) que cambiar de distrito escolar si esa persona reside en otro distrito escolar. En la eventualidad de su muerte o discapacidad, esta designación terminará automáticamente.

INSTRUCCIONES PARA EL USO DE ESTE FORMULARIO:

Párrafo 1: Escriba su nombre legal completo en el espacio provisto. Si existe una Orden Judicial en vigencia que exige que ambos padres firmen, el otro padre/madre escribirá su nombre en el espacio provisto en el Párrafo 7.

Párrafo 2: Escriba su domicilio y número(s) de teléfono. En caso de no incluirse esta información, la autorización no tendrá validez por más de treinta días. Escriba el domicilio donde vivirá durante el período en que esté vigente esta autorización, aunque no sea su domicilio legal. Por ejemplo, si esta autorización se utilizará durante su hospitalización, debe escribir el domicilio del hospital.

Párrafo 3: Escriba el nombre, el domicilio y el número de teléfono de la persona a quien desea designar para que tome decisiones educacionales y/o de salud para su hijo(s)/persona(s) discapacitada(s). Escriba el/los nombre(s) y la(s) fecha(s) de nacimiento para CADA niño(a)/persona discapacitada.

Párrafo 4: Especifique durante cuánto tiempo quiere que esta autorización esté en vigencia marcando la casilla correspondiente y colocando sus iniciales al lado. Recuerde, puede revocar (cancelar) esta designación antes de esa fecha si así lo desea. Al final de estas instrucciones se incluye información sobre cómo hacerlo.

- **Use (a)** si quiere que esta designación tenga validez por seis meses. Si elige esta opción, debe indicar el domicilio y el número de teléfono del padre/madre y la otra persona, y todas las firmas deben estar autenticadas.
- **Use (b)** si quiere que esta designación tenga validez por treinta días. No es necesario que incluya los domicilios y los números de teléfono con esta opción, pero le sugerimos que lo haga en caso de que los proveedores médicos o educacionales necesiten ponerse en contacto con usted.
- **Use (c)** si quiere usar fechas específicas, por un período de menos o más de treinta días. Recuerde, esta designación no se puede usar por más de seis meses, y debe incluir los domicilios, los números de teléfono y las firmas autenticadas si quiere que tenga validez por más de treinta días.
- **Use (d)** si quiere que esta designación comience con un evento específico, como por ejemplo si usted es hospitalizado(a). En tal caso, debe escribir el evento específico en el espacio en blanco provisto (ejemplo: "Cuando sea admitido(a) en un hospital") y escribir la fecha o el evento cuando venza la designación en el segundo espacio (ejemplo: "treinta días más tarde" o "cuando sea dado(a) de alta del hospital"). Nuevamente, debe incluir los domicilios, los números de teléfono y las firmas autenticadas si quiere que la designación tenga validez por más de treinta días.

Párrafo 5: Enumere las cosas que desea que la persona que usted designe tenga autoridad para hacer. Tache y coloque sus iniciales en CADA inciso para indicar que la persona designada NO tiene autoridad para hacerlo. Si hay otras cosas que quiere impedir que la persona haga, enumérelas en los renglones en blanco que aparecen debajo de la lista. Por ejemplo, si quiere que se comuniquen con usted antes de la realización de cualquier examen de salud mental, puede especificarlo en el espacio provisto.

Párrafo 6: Este párrafo permite que la persona que usted designe tenga acceso al historial clínico e información médica de su hijo(a)/hijos(as)/persona(s) discapacitada(s).

Párrafo 7: Aquí encontrará cierta información sobre este formulario. El padre/madre cuyo nombre aparece en el Párrafo 1 luego firma y fecha el formulario. Si esta autorización estará en vigencia por un período de más de treinta días, la firma debe ser autenticada. En este caso, debe llevar el formulario a un notario público antes de firmarlo, y firmar el formulario ante ese notario público, que a su vez también firmará el formulario para indicar que ha sido testigo de su firma. Si no lo hace, esta autorización vencerá automáticamente en treinta días.

Párrafo 8: Si existe una Orden Judicial en vigencia que exige que ambos padres estén de acuerdo con respecto a las decisiones sobre la educación y/o la salud de sus hijos, entonces el otro padre/madre escribirá su nombre legal completo, domicilio y número de teléfono en los espacios provistos. Al igual que el primer padre/madre, no es necesario que indique su domicilio y número de teléfono si la autorización es por un período de treinta días o menos, pero quizás desee hacerlo. Se debe proporcionar esta información y firmar el formulario ante un notario público, si la autorización estará en vigencia por más de treinta días. Si no existe una Orden Judicial en vigencia que exija que ambos padres estén de acuerdo, puede dejar este párrafo en blanco.

Párrafo 9: Escriba el nombre legal completo de la persona que será designada "en una relación paterna/maternal" con el niño(a)/niños(as)/persona(s) discapacitada(s). Luego la persona debe firmar y fechar el formulario, para mostrar que acepta ser una persona en una relación paterna/maternal. Si esta autorización estará vigente por más de treinta días, también se tendrá que firmar ante un notario público.

OTRA INFORMACIÓN:

- Tratamiento médico importante: La persona que usted designe **NO PUEDE** autorizar un "Tratamiento médico importante", lo que se refiere a cualquier intervención o procedimiento médico, quirúrgico o de diagnóstico en el que se utilice anestesia general o que conlleve un riesgo significativo o cualquier invasión considerable de la integridad corporal que requiera una incisión o produzca dolor significativo, molestias, debilitamiento o tenga un período de recuperación prolongado. Esto no incluye: cualquier diagnóstico o tratamiento de rutina como por ejemplo la administración de medicamentos a excepción de quimioterapia para condiciones no psiquiátricas o nutrición o la extracción de fluidos corporales para ser analizados; terapia electro-convulsiva; atención dental con anestesia local; cualquier procedimiento que se realice a causa de una emergencia, en virtud de la sección dos mil quinientos cuatro de la ley de salud pública; la cancelación o interrupción de un tratamiento médico que mantiene las funciones vitales; o la esterilización o la terminación de un embarazo.

Por ejemplo, la persona designada puede autorizar que un niño(a)/persona discapacitada reciba un tratamiento dental estándar, como por ejemplo el empaste de caries, pero no una cirugía dental en la que la persona estará inconsciente durante el procedimiento, tal como en una extracción de la muela de juicio. Se requerirá el consentimiento del padre/madre para los procedimientos médicos importantes.

- Revocación de esta designación: A fin de revocar (cancelar) esta autorización, sólo tiene que informarle a la persona que designó que desea hacerlo, y él/ella debería notificar a los proveedores educacionales y médicos correspondientes que la autorización ha sido cancelada. Si bien no es necesario que el padre/madre haga la revocación por escrito, o notifique a los proveedores médicos y educacionales del niño(s)/persona(s) discapacitada(s) que ha revocado la autorización, quizás prefiera hacerlo para evitar cualquier tipo de confusión. Si ambos padres firmaron el formulario, tanto el padre como la madre puede cancelar la designación; es decir, no es necesario que ambos padres lo hagan.

New York General Obligations Law §§5-1551 – 5-1555

§5-1551. Power of parent to designate a person in parental relation

A parent of a minor or incapacitated person may designate another person as a person in parental relation to such minor or incapacitated person pursuant to sections twenty-one hundred sixty-four and twenty-five hundred four of the public health law and sections two and thirty-two hundred twelve of the education law for a period not exceeding six months provided that there is no prior order of any court in any jurisdiction currently in effect that would prohibit such parent from himself or herself exercising the same or similar authority, and provided further, that, in the case where a court has ordered that both parents must agree on education or health decisions regarding the child, a designation pursuant to this subdivision shall not be valid unless both parents have consented thereto. Such designation shall be in the form prescribed by section 5-1552 of this title, and may be presented to any school, health care provider or health plan that requires such designation by either the parent or the designee.

§5-1552. Form of designation

1. Designations in *general*. A designation of a person in parental relation pursuant to this title shall be in writing and shall include: the name of the parent, the name of the designee, the name of each minor or incapacitated person with respect to whom such designation is made, the parent's signature, and the date of such signature. The designation may specify a period of time less than six months for which such designation shall be valid unless earlier revoked by such parent pursuant to section 5-1554 of this title, provided that any designation specifying a period of more than thirty days shall also conform to the provisions of subdivision two of this section.

2. Designations for more than thirty days. A designation specifying a period of more than thirty days shall also include: an address and telephone number where the parent can be reached, an address and telephone number where the designee can be reached, the date of birth of each minor or incapacitated person with respect to whom such designation is made, the date or contingent event on which the designation commences, the written consent of the designee to such designation, and a statement that there is no prior order of any court in any jurisdiction currently in effect prohibiting such parent from making the designation. A designation specifying a period of more than thirty days shall be notarized.

3. Designations not specifying a time period. If no time period is specified in a designation, it shall be valid until the earlier of revocation or the expiration of thirty days from the date of signature if the designation does not meet the requirements of subdivision two of this section, or six months from the date of commencement specified therein if the designation meets the requirements of subdivision two of this section.

§5-1553. Scope of designation

A designation pursuant to this title may specify: the treatment, diagnosis or activities for which consent is authorized; any treatment, diagnosis or activity for which

consent is not authorized; or any other limitation on the duties and responsibilities conveyed by the designation.

§5-1554. Revocation of designation

A parent may revoke a designation by notifying, either orally or in writing, the designee or a school, health care provider, or health plan to which the designation has been presented, or by any other act evidencing a specific intent to revoke the designation. A designation shall also be revoked upon the execution by the parent of a subsequent designation. Revocation by one parent authorized to execute such a designation shall be deemed effective and complete revocation of a designation pursuant to this title. A designee who receives notification from a parent of any such revocation shall forthwith notify any school, health care provider or health plan to which a designation pursuant to this title has been presented. A parent may directly notify any such school, health care provider or health plan of the revocation, in which case the failure of the designee to notify such entities of the revocation shall not make revocation ineffective.

§5-1555. Effect of designation

1. A designee shall possess all the powers and duties of a person in parental relation pursuant to sections twenty-one hundred sixty-four and twenty-five hundred four of the public health law and sections two and thirty-two hundred twelve of the education law, unless otherwise specified in the designation.

2. A designation shall not impose upon a designee a duty to support pursuant to section four hundred thirteen of the family court act.

3. A designation shall not cause a change in the school district of residence of the child for purposes of the education law, and during the period of validity of the designation, the child shall be presumed to be a resident of the school district in which the parent resided at the time the designation was made.

4. A designation shall terminate and be deemed revoked upon the death or incapacity of the parent who signed the designation.

5. The decision of a designee shall be superseded by a contravening decision of a parent.

6. A person who acts based upon the consent of a designee reasonably and in the good faith belief that the parent has in fact authorized the designee to provide such consent pursuant to the provisions of this title, may not be deemed to have acted negligently, unreasonably or improperly in accepting the designation and acting upon such consent; provided, however, that any such person may be deemed to have acted negligently, unreasonably or improperly if he or she has knowledge of facts indicating that the designation was never given, or did not extend to an act or acts in question, or was revoked.

7. No provision of this title shall be construed to require designation of a person in parental relation as provided in this title where such designation is not otherwise required by law, rule or regulation.

New York Public Health Law §§ 2164, 2504

§2164. Definitions; immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, meningococcal disease, and hepatitis B

1. As used in this section, unless the context requires otherwise:
 - a. The term “school” means and includes any public, private or parochial child caring center, day nursery, day care agency, nursery school, kindergarten, elementary, intermediate or secondary school.
 - b. The term “child” shall mean and include any person between the ages of two months and eighteen years.
 - c. The term “person in parental relation to a child” shall mean and include his father or mother, by birth or adoption, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of a child if he has assumed the charge and care of the child because the parents or legally appointed guardian of the minor have died, are imprisoned, are mentally ill, or have been committed to an institution, or because they have abandoned or deserted such child or are living outside the state or their whereabouts are unknown, or have designated the person pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to the child.
 - d. The term “health practitioner” shall mean any person authorized by law to administer an immunization.
2.
 - a. Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health council.
 - b. Every person in parental relation to a child in this state born on or after January first, nineteen hundred ninety-four and entering sixth grade or a comparable age level special education program with an unassigned grade on or after September first, two thousand seven, shall have administered to such child a booster immunization containing diphtheria and tetanus toxoids, and an acellular pertussis vaccine, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health council.
 - c. Every person in parental relation to a child in this state entering or having entered seventh grade and twelfth grade or a comparable age level special education program with an unassigned grade on or after September first, two thousand sixteen,

shall have administered to such child an adequate dose or doses of immunizing agents against meningococcal disease as recommended by the advisory committee on immunization practices of the centers for disease control and prevention, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health and planning council.

3. The person in parental relation to any such child who has not previously received such immunization shall present the child to a health practitioner and request such health practitioner to administer the necessary immunization against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, and hepatitis B as provided in subdivision two of this section.

4. If any person in parental relation to such child is unable to pay for the services of a private health practitioner, such person shall present such child to the health officer of the county in which the child resides, who shall then administer the immunizing agent without charge.

5. The health practitioner who administers such immunizing agent against poliomyelitis, mumps, measles, diphtheria, Haemophilus influenzae type b (Hib), rubella, varicella, pertussis, tetanus, pneumococcal disease, meningococcal disease, and hepatitis B to any such child shall give a certificate of such immunization to the person in parental relation to such child.

6. In the event that a person in parental relation to a child makes application for admission of such child to a school or has a child attending school and there exists no certificate or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease, the principal, teacher, owner or person in charge of the school shall inform such person of the necessity to have the child immunized, that such immunization may be administered by any health practitioner, or that the child may be immunized without charge by the health officer in the county where the child resides, if such person executes a consent therefor. In the event that such person does not wish to select a health practitioner to administer the immunization, he or she shall be provided with a form which shall give notice that as a prerequisite to processing the application for admission to, or for continued attendance at, the school such person shall state a valid reason for withholding consent or consent shall be given for immunization to be administered by a health officer in the public employ, or by a school physician or nurse. The form shall provide for the execution of a consent by such person and it shall also state that such person need not execute such consent if subdivision eight or nine of this section apply to such child.

7.

a. No principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school, or to attend such school, in excess of fourteen

days, without the certificate provided for in subdivision five of this section or some other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease; provided, however, such fourteen day period may be extended to not more than thirty days for an individual student by the appropriate principal, teacher, owner or other person in charge where such student is transferring from out-of-state or from another country and can show a good faith effort to get the necessary certification or other evidence of immunization.

b. A parent, a guardian or any other person in parental relationship to a child denied school entrance or attendance may appeal by petition to the commissioner of education in accordance with the provisions of section three hundred ten of the education law.

8. If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child's health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child's health.

8-a. Whenever a child has been refused admission to, or continued attendance at, a school as provided for in subdivision seven of this section because there exists no certificate provided for in subdivision five of this section or other acceptable evidence of the child's immunization against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, hepatitis B, pertussis, tetanus, and, where applicable, Haemophilus influenzae type b (Hib), meningococcal disease, and pneumococcal disease, the principal, teacher, owner or person in charge of the school shall:

a. forward a report of such exclusion and the name and address of such child to the local health authority and to the person in parental relation to the child together with a notification of the responsibility of such person under subdivision two of this section and a form of consent as prescribed by regulation of the commissioner, and

b. provide, with the cooperation of the appropriate local health authority, for a time and place at which an immunizing agent or agents shall be administered, as required by subdivision two of this section, to a child for whom a consent has been obtained. Upon failure of a local health authority to cooperate in arranging for a time and place at which an immunizing agent or agents shall be administered as required by subdivision two of this section, the commissioner shall arrange for such administration and may recover the cost thereof from the amount of state aid to which the local health authority would otherwise be entitled.

9. This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.

10. The commissioner may adopt and amend rules and regulations to effectuate the provisions and purposes of this section.

11. Every school shall annually provide the commissioner, on forms provided by the commissioner, a summary regarding compliance with the provisions of this section.

§2504. Enabling certain persons to consent for certain medical, dental, health and hospital services

1. Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.

2. Any person who has been married or who has borne a child may give effective consent for medical, dental, health and hospital services for his or her child. Any person who has been designated pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to a child may consent to any medical, dental, health and hospital services for such child for which consent is otherwise required which are not: (a) major medical treatment as defined in subdivision (a) of section 80.03 of the mental hygiene law; (b) electroconvulsive therapy; or (c) the withdrawal or discontinuance of medical treatment which is sustaining life functions.

3. Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.

4. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

5. Where not otherwise already authorized by law to do so, any person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter and, (i) a grandparent, an adult brother or sister, an adult aunt or uncle, any of whom has assumed care of the child and, (ii) an adult who has care of the child and has written authorization to consent from a person in a parental relation to a child as defined in section twenty-one hundred sixty-four of this chapter, may give effective consent for the immunization of a child. However, a person other than one in a parental relation to the child shall not give consent under this subdivision if he or she has reason to believe that a person in parental relation to the child as defined in section twenty-one hundred sixty-four of this chapter objects to the immunization.

6. Anyone who acts in good faith based on the representation by a person that he is eligible to consent pursuant to the terms of this section shall be deemed to have received effective consent.

New York Mental Hygiene Law §80.03

§80.03. Definitions

When used in this article:

- (a) “Major medical treatment” means a medical, surgical or diagnostic intervention or procedures where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period. Such term does not include: any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; electroconvulsive therapy; dental care performed with a local anesthetic; any procedures which are provided under emergency circumstances, pursuant to section twenty-five hundred four of the public health law; the withdrawal or discontinuance of medical treatment which is sustaining life functions; or sterilization or the termination of a pregnancy.

- (b) “A patient in need of surrogate decision-making” means a patient as defined in subdivision twentythree of section 1.03 of this chapter who is: a resident of a mental hygiene facility including a resident of housing programs funded by an office of the department or whose federal funding application was approved by an office of the department or for whom such facility maintains legal admission status therefor; or, receiving home and community-based services for persons with mental disabilities provided pursuant to section 1915 of the federal social security act; or receiving individualized support services; or, case management or service coordination funded, approved, or provided by the office for people with developmental disabilities; and, for whom major medical treatment is proposed, and who is determined by the surrogate decision-making committee to lack the ability to consent to or refuse such treatment, but shall not include minors with parents or persons with legal guardians, committees or conservators who are legally authorized, available and willing to make such health care decisions. Once a person is eligible for surrogate decision-making, such person may continue to receive surrogate decision-making as authorized by this section regardless of a change in residential status.

- (c) “Lack of ability to consent to or refuse major medical treatment” means the patient cannot adequately understand and appreciate the nature and consequences of a proposed major medical treatment, including the benefits and risks of and alternatives to such treatment, and cannot thereby reach an informed decision to consent to or to refuse such treatment in a knowing and voluntary manner that promotes the patient’s well-being.

- (d) “Best interests” means promoting personal well-being by the assessment of the risks, benefits and alternatives to the patient of a proposed major medical treatment, taking into account factors including the relief of suffering, the preservation or restoration of functioning, improvement in the quality of the patient’s life with and without the

proposed major medical treatment and consistency with the personal beliefs and values known to be held by the patient.

- (e) “Surrogate decision-making committee” means a committee of at least twelve persons established pursuant to section 80.05 of this article.
- (f) “Panel” means a subcommittee of four members of the surrogate decision-making committee.
- (g) “Commission” means the commission on quality of care and advocacy for persons with disabilities.
- (h) “Providers of health services” means, for the purposes of this article, those defined in subdivisions five and six of section 1.03 of this chapter; hospitals, as defined pursuant to article twenty-eight of the public health law; physicians and dentists.
- (i) “Declarant” means a person who submits a declaration pursuant to the provisions of this article and may include any provider of health services, the director of the patient’s residential facility or a relative or correspondent of the patient.
- (j) “Declaration” means a written statement submitted in accordance with section 80.07 of this article.
- (k) “Correspondent” means a person who has demonstrated a genuine interest in promoting the best interests of the patient by having a personal relationship with the patient, by participating in the patient’s care and treatment, by regularly visiting the patient, or by regularly communicating with the patient.

New York Education Law § 3212

§3212. Definition of persons in parental relation and their duties; duties of certain other persons

1. Definition. As used in this article, a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown, or have designated the person pursuant to title fifteen-A of article five of the general obligations law as a person in parental relation to the child.

2. Duties of persons in parental relation. Every person in parental relation to another individual included by the provisions of part one of this article:

a. Shall submit at the time such individual begins to attend upon instruction evidence of age as required for the issuance of an employment certificate, or show that such evidence cannot be produced. When such evidence cannot be produced, or when circumstances exist which reasonably indicate that such individual may be a missing child, the superintendent of schools or his or her authorized representative shall report and make inquiry to the statewide central register for missing children pursuant to section eight hundred thirty-seven-e of the executive law. If such child appears to match a child registered with the statewide central register for missing children, or one registered with the national crime information center register, the superintendent or his or her authorized representative shall immediately contact the local law enforcement authority. No civil or criminal liability shall arise or attach to any school district or employee thereof for any act or omission to act as a result of, or in connection with, the duties or activities authorized or directed by this paragraph.

b. Shall cause such individual to attend upon instruction as hereinbefore required, and to comply with the provisions of part one of this article with respect to the employment or occupation of minors in any business or service whatever.

c. Shall cause such individual to be placed in proper physical condition to attend upon required instruction, if his physical condition is remediable by the taking of reasonable measures.

d. Shall furnish proof that an individual who is not attending upon instruction at a public or parochial school in the city or district where the person in parental relation resides is attending upon required instruction elsewhere. Failure to furnish such proof shall be presumptive evidence that such individual is not attending.

e. Shall furnish, with respect to an individual from seventeen to twenty-one years of age, on demand of a duly authorized representative of the school authorities, satisfactory proof that he is able to speak, read and write English as required for the

completion of the fifth year of the elementary school course of study, or cause such individual to submit to an examination to determine his ability in these respects.

3. Exception. A person in parental relation to another individual included by the foregoing provisions of this section shall not be subject thereto if it can be shown that he is unable to control such individual.

4. Duties of certain individuals from sixteen to twenty-one years of age. An individual from sixteen to twentyone years of age, if not under the control of a person in parental relation, shall comply with such requirements of part one of this article as are applicable.

5. Duties of other persons.

a. No person shall induce another individual to absent himself from attendance upon required instruction or harbor him while he is absent or aid or abet him in violating any provision of part one of this article.

b. No person shall interfere with an attendance officer in the lawful pursuit of his duties, or neglect or refuse to answer his lawful inquiries.

c. No person shall violate any provision of part one of this article in relation to employment of minors, duties of employers, issuance or transfer of any paper authorizing the employment of minors.

d. No person shall make a false oral or written statement in or in relation to any employment certificate or other paper required by part one of this article as to any matter required to appear therein.

e. [Repealed]

f. No person shall present as his own any substitute, altered or transferred certificate or badge.

6. Birth certificates. For the purpose of part one of this article, the board of health upon request shall furnish to the school authorities, or to the person in parental relation to a minor, or to an individual from seventeen to twenty-one years of age, a duly certified transcript of the birth certificate, filed according to law, of an individual from five to twenty-one years of age.

Guardianship

Guardianship is a long-term option and may be familiar to immigration lawyers as a common first step for persons seeking Special Immigrant Juvenile Status.

A person (a relative or unrelated person) can petition the Family Court for guardianship of a child. In addition, a person over the age of 14 can petition for appointment of a guardian.

The Surrogate's Court also has jurisdiction over guardianship proceedings; however, in addition to guardianship proceedings relating to the person of the child, it may also hear guardianship proceedings relating to the property of the child.

The court typically conducts an inquiry into the home, including an inquiry to determine whether the proposed guardian or any member of the household over the age of 18 has been the subject of an indicated report or is under investigation by OCFS.

The court may require fingerprinting of the proposed guardian or other members of the household, though it is not required by statute.

Kinship Guardianship is a form of subsidized guardianship. It is limited to situations where a child was in kinship foster care with the person seeking to become the "kinship guardian".

More information can be found at:

https://www.nycourts.gov/courts/nyc/family/faqs_guardianship.shtml

<http://www.nycourts.gov/courthelp/guardianship/index.shtml>

Attachments:

- Form 6-1 – Petition for appointment as Guardian
- Form 6-1-a – Petition by Person Over 14 for Appointment of Guardian of a Person or Permanent Guardian
- Form 6-1-c – Petition for Appointment of Kinship Guardian (subsidized Kinship Guardian Program)
- Form 6-3 – Consent Of Person Over 18 And Preference Of Person Over 14 Regarding Appointment Of Guardian
- Form 6-4 – Parents' Waiver of Process, Renunciation of Parental Rights and Consent
- Form 6-6 – Sample Letter of Guardianship of the Person of a Minor
- New York Family Court Act 661

F.C.A. § 661;
S.C.P.A. §§ 1701 - 1704

Form 6-1
(Petition for Appointment
As Guardian of a Person Or
Permanent Guardian)
3/2009

.....
Proceeding for the Appointment of a
Guardian of the Person or Permanent Guardian of

Docket No.
Family File No.
PETITION FOR
APPOINTMENT AS
Guardian of Person
Permanent Guardian

A Person Under the Age of 21
.....

TO THE FAMILY COURT:

The Petitioner respectfully alleges to this Court that:

1. I am [specify relationship]: _____ of the person under the age of
21 who is the subject of this petition and I am submitting this petition in order to be appointed
[check applicable box]: Guardian of the Person Permanent Guardian.¹

2. My name is [specify]: _____ and I live at [specify
name and complete address of residence]:²

3. The name, date of birth and residence of the person under the age of 21 who is the
subject of this proceeding are as follows:

Name:

Date of Birth:

Complete address:³

¹ A "permanent guardian" may be appointed, pursuant to Family Court Act §661(b) and Surrogate's Court Procedure Act §1702(2), if the Court finds that it is in the best interests of a person under the age of 21, who has been committed to an authorized agency through termination of parental rights or surrender or whose birth parents or other persons entitled to notice of, or to consent to, adoption are deceased. Persons over the age of 18 must consent to such an appointment, which may last until the person reaches the age of 21.

² Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

³ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

4. The subject of this proceeding is is not a Native American child under the age of 18 who is subject to the *Indian Child Welfare Act of 1978* (25 U.S.C. §§1901-1963). If so, the following have been notified [check applicable box(es)]:

- parent/custodian [specify name and give notification date]:
- tribe/nation [specify name and give notification date]:
- United States Secretary of the Interior [give notification date]:

5. The name and relationship of person with whom the subject of this proceeding resides are as follows:

Person with whom subject resides [specify name]:
 Relationship to subject:
 Address [include street, city, village or town, county and state]:⁴

6. (Upon information and belief) The religion of the person who is the subject of this proceeding is

7. The names, relationship and post office addresses of the birth parents of the subject of the proceeding, the name and address of the person with whom the subject resides, if other than the parent(s), on whom process should issue; and such other persons concerning whom the court is required to have information, are as follows: [If either birth parent is dead or has surrendered or has had parental rights terminated (TPR) , so allege; if both parents are dead, indicate nearest adult next of kin]:

<u>Relationship</u>	<u>Name</u>	<u>Complete Address</u>	<u>Deceased?</u>	<u>TPR?</u>	<u>Surrender?</u>
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Birth mother:

Birth father:

Person with whom
 the subject resides,
 if other than parents:

Adult next of kin, if
 birth parents are dead:

Other [specify]: ⁵

⁴ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

⁵ Include Mental Hygiene Legal Services, if the subject of the proceeding is mentally retarded or developmentally disabled and has been admitted to a facility, and any person entitled to notice of or consent to the adoption of the subject of the proceeding.

8. a. Appointing me as the guardian of the person permanent guardian would be in [subject's name]: best interests and would preserve his/her legal rights because [specify facts regarding the suitability, ability and commitment of the proposed guardian to assume full legal responsibility and raise him/her to adulthood]:

b. [Required where appointment of permanent guardian is requested, pursuant to Family Court Act §661(b) or S.C.P.A. §1702(2); delete if inapplicable]:

(i) [Check applicable box]:

guardianship and custody have been committed to the following authorized agency [specify, include whether by surrender or termination of parental rights and attach certified copies of the orders terminating parental rights or approving the surrenders, as applicable]:

both parents of the child, whose consent to or notice of an adoption would have been required, are deceased [attach death certificates].

(ii) The local social services district performed an assessment, as required by S.C.P.A. §1704(8), that recommended the following [specify and attach a copy of the assessment]:

9: [Applicable to cases in which child protective petition or permanency hearing report has been filed regarding the children and in which petitioner is a relative or other non-parent; delete if inapplicable]:

a. A child protective petition, Docket # [specify]: _____, was filed in Family Court, [specify county]: _____ on [specify date]: _____ alleging that [specify names of respondents on that petition]: _____ neglected or abused the above-named child(ren). The petition resulted in [specify whether finding was made and, if so, the disposition; if the disposition has been adjourned pending a consolidated hearing with this petition, pursuant to F.C.A. §1055-b, so indicate and give next court date]: _____

b. A permanency report, Docket # [specify]: _____, pursuant to Article 10-A of the Family Court Act, was filed in Family Court, [specify county]: _____ on [specify date]: _____ indicating a permanency plan of guardianship of the child(ren) with Petitioner in this proceeding. The permanency hearing was adjourned to [specify date]: _____ pending a consolidated hearing with this petition, pursuant to F.C.A. §1089-a.

c. The child's birth mother has has not consented to the award of guardianship to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek

guardianship of the child(ren) [specify]:

d. The child's legally-established birth father has has not consented to the award of guardianship to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek guardianship of the child(ren) [specify]:

e. The child has been living with the following foster parent(s)[specify]:
since [specify date]: The foster parent(s)
 has/have has/have not consented to the award of guardianship to the Petitioner. [If unaware whether they have consented, so state]:

f. The local department of social services [specify]: _____ in the related child abuse or neglect permanency proceeding has has not consented to the award of guardianship to the Petitioner. [If unaware whether they have consented, so state]:

g. The attorney for the child(ren) [specify]: _____ in the related child abuse or neglect permanency proceeding has has not consented to the award of guardianship to the Petitioner. [If unaware whether they have consented, so state]:

9. (Upon information and belief) No guardian pursuant to will or deed, or guardian of the person pursuant to Section 384 or 384-b of the Social Services Law, has been previously appointed for the subject of this proceeding, except [specify]:

10. Upon information and belief, [Check all applicable box(es)]:

a. I have never been the subject of an indicated report, as such term is defined in of the Social Services Law §412, that has been filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

I was the subject of an indicated report, as defined in of the Social Services Law §412, that was filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the date of the report, determination of whether "indicated" or "unfounded," status and circumstances to the extent known]:

 I am the subject of a report, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remains under investigation. [Specify the date of the report, status and circumstances to the extent known]:

____ b. I have never been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act.

I have been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act. [Specify whether the proceeding resulted in an order finding that a child or children was/were abused or neglected, indicate whether the subject of this proceeding was found to be abused or neglected and provide the date and status of the proceeding to the extent known]:

c. I have never been the subject of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

I have been the subject of an Order of Protection or Temporary Order of Protection in a criminal, matrimonial or Family Court proceeding(s) as follows [specify the court, docket or index number, whether I was protected or restrained by the order, date of order, expiration date of order, next court date and status of case to the extent known]:

11. Upon information and belief, [check applicable box(es)]:

a. The following adults who are age 18 or older live in my home:

<u>Name</u>	<u>Relationship, if any, to subject of proceeding</u>	<u>Date of Birth</u>
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b. None of the adults 18 or older living in my home has ever been the subject of any indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

The following adults 18 or older living in my home have been the subjects of indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the name(s) of the adults, date(s) of the report(s), whether the subject of this proceeding was the subject of the report(s), status and circumstances to the extent known]:

_____ The following adults 18 or older living in my home are the subjects of reports, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remain under investigation [Specify the name(s) of the adults, whether the subject of this proceeding is the subject of the report(s), date(s) of the report(s), status and circumstances to the extent known]:

c. None of the adults 18 or older living in my home has ever been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the Family Court Act.

the following adults 18 or older living in my home have been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the Family Court Act, as follows [Specify the names of the adults, whether the proceedings have resulted in orders finding that the child is an abused or neglected child, whether the subject of this proceeding was a subject of those proceedings and the date and status of the proceedings to the extent known]:

d. None of the adults 18 or older living in my home has ever been the subjects of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

the following adults 18 or older living in my home have been the subjects of Orders of Protection or Temporary Orders of Protection in criminal, matrimonial or Family Court proceeding(s), as follows [specify the names of the adults, whether the adults are or were restrained or protected by the order(s), court, docket or index number, date of order, expiration date of order, next court date and status of cases to the extent known]:

12. The birth parent(s) of the child [specify]:
although living, should not be appointed guardian of the person of the child because:

13. a. [Applicable where the subject of the proceeding is 18 years of age or older; delete if inapplicable]: The person who is the subject of this proceeding is over the age of 18 and has consented to the appointment of the guardian, a copy of which is attached.

b. [Applicable where the child is over 14 years of age but less than 18; delete if inapplicable]: The child, who is over the age of 14, has expressed a preference for the appointment of the guardian, a copy of which is attached.

14. There are no persons interested in this proceeding other than those mentioned above.

15. No prior application has been made to any court, including a Native- American tribunal, for the relief requested herein (except [specify]: _____).

WHEREFORE, Petitioner requests that an order be entered appointing me to be the guardian of the person permanent guardian of [specify]:
until the child reaches the age of 18 21 upon his/her consent,
and that letters of guardianship issue.

Dated:

Signature of Petitioner

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF)

),being duly sworn, says that (s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to (his)(her) own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Sworn to before me this
day of

Petitioner

(Deputy)Clerk of the Court
Notary Public

F.C.A. § 661;
S.C.P.A. §§ 1701 - 1704

Form 6-1-a
(Petition by Person Over 14 for
Appointment Of Guardian of a
Person Or Permanent Guardian)
9/2008

.....
Proceeding for the Appointment of a
Guardian of the Person or Permanent Guardian of

Docket No.
Family File No.
PETITION BY PERSON
OVER 14 FOR
APPOINTMENT OF
Guardian of Person
Permanent Guardian

A Person Under the Age of 21

.....
TO THE FAMILY COURT:

The Petitioner respectfully alleges to this Court that:

1. I am a person over the age of 14 and under the age of 21 and I am submitting this petition on my own behalf to request that [specify proposed guardian]:
be appointed as my [check applicable box]: Guardian of the Person Permanent Guardian.¹

- 2. a. I was born on [specify date and year of birth]:
- b. I live at [specify name and complete address of residence]:²
- c. I live with [specify]:
 who is/are related to me as follows [specify]:

3. a. The name and residence of the proposed guardian are as follows:
Name:
Complete address:³

¹ A "permanent guardian" may be appointed, pursuant to Family Court Act §661(b) and Surrogate's Court Procedure Act §1702(2) if the Court finds that it is in the best interests of a person under the age of 21, who has been committed to an authorized agency through termination of parental rights or surrender or whose birth parents or other persons entitled to notice of, or to consent to, adoption are deceased. Persons over the age of 18 must consent to such an appointment, which may last until the person reaches the age of 21.

² Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

³ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

b. He/She has consented to appointment as guardian, a copy of which is attached.

4. I am am not a Native American child under the age of 18 who is subject to the *Indian Child Welfare Act of 1978* (25 U.S.C. §§1901-1963). If so, the following have been notified [check applicable box(es)]:

- parent/custodian [specify name and give notification date]:
- tribe/nation [specify name and give notification date]:
- United States Secretary of the Interior [give notification date]:

5. My religion is [specify, if any]:

6. The names, relationship and post office addresses of my birth parents, the name and address of the person with whom I live, if other than my birth parent(s), on whom process should issue; and such other persons concerning whom the court is required to have information, are as follows: [If either birth parent is dead or has surrendered or has had parental rights terminated (TPR), so allege; if both parents are dead, indicate nearest adult next of kin]:

<u>Relationship</u>	<u>Name</u>	<u>Complete Address</u> ⁴	<u>Deceased?</u>	<u>TPR?</u>	<u>Surrender?</u>
---------------------	-------------	--------------------------------------	------------------	-------------	-------------------

Birth mother:

Birth father:

Person with whom I reside, if other than parents:

Adult next of kin, if birth parents are dead:

Other [specify]: ⁵

7. a. Appointing [specify proposed guardian]:

as the guardian of my person permanent guardian would be in my best interests and would preserve my legal rights because [specify facts regarding the suitability, ability and commitment of the proposed guardian to assume full legal responsibility and raise you to adulthood]:

⁴ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

⁵ Include Mental Hygiene Legal Services, if the petitioner is mentally retarded or developmentally disabled and has been admitted to a facility, and any person entitled to notice of or consent to petitioner's adoption.

b. [Required where appointment of permanent guardian is requested, pursuant to Family Court Act §661(b) or S.C.P.A. §1702(2); delete if inapplicable]:

(i) [Check applicable box]:

my guardianship and custody have been committed to the following authorized agency [specify, include whether by surrender or termination of parental rights and attach certified copies of the orders terminating parental rights or approving the surrenders, as applicable]:

both of my birth parents, whose consent to or notice of my adoption would have been required, are deceased [attach death certificates].

(ii) The local social services district performed an assessment, as required by S.C.P.A. §1704(8), that recommended the following [specify and attach a copy of the assessment]:

8. (Upon information and belief) No guardian pursuant to will or deed, or guardian of the person pursuant to Section 384 or 384-b of the Social Services Law, has been previously appointed for me, except [specify]:

9. Upon information and belief, [Check all applicable box(es)]:

a. The proposed guardian has never been the subject of an indicated report, as such term is defined in of the Social Services Law §412, that has been filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

The proposed guardian was the subject of an indicated report, as defined in of the Social Services Law §412, that was filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the_date of the report, determination of whether "indicated" or "unfounded," status and circumstances to the extent known]:

____ The proposed guardian is the subject of a report, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remains under investigation. [Specify the_date of the report, status and circumstances to the extent known]:

____ b. The proposed guardian has never been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act.

The proposed guardian has been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act. [Specify whether the

proceeding resulted in an order finding that a child or children was/were abused or neglected, indicate whether the petitioner was found to be abused or neglected and provide the date and status of the proceeding to the extent known]:

c. The proposed guardian has never been the subject of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

The proposed guardian has been the subject of an Order of Protection or Temporary Order of Protection in a criminal, matrimonial or Family Court proceeding(s) as follows [specify the court, docket or index number, who was protected and who was restrained by the order, date of order, expiration date of order, next court date and status of case to the extent known]:

10. Upon information and belief,[check applicable box(es)]:

a. The following adults 18 or older live in the proposed guardian’s home:

<u>Name</u>	<u>Relationship, if any, to subject of proceeding</u>	<u>Date of Birth</u>
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b. None of the adults 18 or older living in the proposed guardian’s home has ever been the subject of any indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

The following adults 18 or older living in the proposed guardian’s home have been the subjects of indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the name(s) of the adults, date(s) of the report(s), whether petitioner in this proceeding was the subject of the report(s), status and circumstances to the extent known]:

_____ The following adults 18 or older living in the proposed guardian’s home are the subjects of reports, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remain under investigation [Specify the name(s) of the adults, whether the subject of this proceeding is the subject of the report(s), date(s) of the report(s), status and circumstances to the extent known]:

c. None of the adults 18 or older living in the proposed guardian’s home has ever been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the

Family Court Act.

the following adults 18 or older living in the proposed guardian's home have been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the Family Court Act, as follows [Specify the names of the adults, whether the proceedings have resulted in orders finding that the child is an abused or neglected child, whether the petitioner in this proceeding was a subject of those proceedings and the date and status of the proceedings to the extent known]:

d. None of the adults 18 or older living in the proposed guardian's home has ever been the subjects of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

the following adults 18 or older living in the proposed guardian's home have been the subjects of Orders of Protection or Temporary Orders of Protection in criminal, matrimonial or Family Court proceeding(s), as follows [specify the names of the adults, whether the adults are or were restrained or protected by the order(s), court, docket or index number, date of order, expiration date of order, next court date and status of cases to the extent known]:

11. My birth parent(s) [specify]:
although living, should not be appointed as my guardian because:

12. a. [Applicable where the petitioner is 18 years of age or older; delete if inapplicable]: I am over the age of 18 and have consented to the appointment of the guardian, a copy of which is attached.

b. [Applicable where the child is over 14 years of age but less than 18; delete if inapplicable]: I have expressed a preference for the appointment of the guardian, a copy of which is attached.

13. There are no persons interested in this proceeding other than those mentioned above.

14. No prior application has been made to any court, including a Native- American tribunal, for the relief requested herein (except [specify]):

WHEREFORE, I am requesting that an order be entered appointing [specify]:
to be the guardian of my person permanent guardian until I reach the age of: 18 21
and that letters of guardianship issue.

Dated:

Signature of Petitioner

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF)

,being duly sworn, says that (s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to (his)(her) own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Sworn to before me this
day of

Petitioner

(Deputy)Clerk of the Court
Notary Public

F.C.A §§ 661; 1089-a; S.C.P.A. §§ 1701- 1707
[NOTE: This form should be used only by Petitioners seeking appointment as kinship guardians, who have fully executed agreements with the local social services district under the NYS Subsidized Kinship Guardian Program]

Form 6-1-c
(Petition for Appointment of Kinship Guardian [Subsidized Kinship Guardian Program] and/or Permanent Guardian)
12/2015

.....
Proceedings for the Appointment of a
 Kinship guardian (Subsidized Kinship Guardian Program)
 Permanent Guardian
of

Docket No.
Family File No.
**PETITION FOR
APPOINTMENT AS**
 **Kinship guardian [Subsidized
Kinship Guardian Program]**
 Permanent Guardian

A Person Under the Age of 21

.....
TO THE FAMILY COURT:

The Petitioner respectfully alleges to this Court that:

1. I am [specify relationship]: _____ of the person under the age of 21
who is the subject of this petition and I am submitting this petition in order to be appointed [check one or both boxes]: Kinship Guardian in conjunction with the NYS Subsidized Kinship Guardian Program ¹
 Permanent Guardian.²

2. My name is [specify]: _____ and I live at [specify name]

¹ A “kinship guardian” under the NYS Subsidized Kinship Guardian Program may be appointed pursuant to Family Court Act §661 and Surrogate’s Court Procedure Act §1707, if the Court finds: that the appointment is in the child’s best interests, that the guardian and the local social services district have a fully executed agreement for payments in accordance with Title 10 of Article 6 of the Social Services Law and that the guardian has cared for the child as a fully certified or approved foster parent for at least six consecutive months prior to the application for the guardianship subsidy. Note that by executing the agreement with the prospective guardian, the social services district has indicated that it has determined the prospective guardian to be eligible for the Subsidized Kinship Guardian subsidy, contingent upon the Court’s approval of the guardianship petition and issuance of letters of guardianship. The court must further determine that if the related proceeding was a child protective proceeding, the fact-finding and permanency hearings must have been completed., or, if the related proceeding was a voluntary foster care, PINS, juvenile delinquency or freed-child permanency proceeding, that a permanency hearing has been completed in such proceeding. Persons over the age of 18 must consent to the kinship guardian’s appointment. If the application to the social services district for Subsidized Kinship Guardian payments was made after the child’s 16th birthday and certain vocational or educational conditions are met, the payments may last until the person reaches the age of 21.

² A “permanent guardian” may be appointed, pursuant to Family Court Act §661(b) and Surrogate’s Court Procedure Act §1702(2), if the Court finds that it is in the best interests of a person under the age of 21, who has been committed to an authorized agency through termination of parental rights or surrender or whose birth parents or other persons entitled to notice of, or to consent to, adoption are deceased. Persons over the age of 18 must consent to such an appointment, which may last until the person reaches the age of 21. A person may be appointed as both a permanent and a subsidized kinship guardian.

and complete address of residence]:³

3. The name, date of birth and residence of the person under the age of 21 who is the subject of this proceeding are as follows:

- Name:
- Date of Birth:
- Complete address:⁴

4. The subject of this proceeding is is not a Native American child under the age of 18 who is subject to the *Indian Child Welfare Act of 1978* (25 U.S.C. §§1901-1963). If so, the following have been notified [check applicable box(es)]:

- parent/custodian [specify name and give notification date]:
- tribe/nation [specify name and give notification date]:
- United States Secretary of the Interior [give notification date]:

5. The name and relationship of person with whom the subject of this proceeding resides are as follows:

- Person with whom subject resides [specify name]:
- Relationship to subject:
- Address [include street, city, village or town, county and state]:⁵

6. (Upon information and belief) The religion of the person who is the subject of this proceeding is [specify]:

7. (Upon information and belief) The names, relationship and post office addresses of the birth parents of the subject of the proceeding, the name and address of the person with whom the subject resides, if other than the parent(s), on whom process should issue; and such other persons concerning whom the court is required to have information, are as follows: [If either birth parent is dead or has surrendered or has had parental rights terminated (TPR), so allege; if both parents are dead, indicate nearest adult next of kin]:

<u>Relationship</u>	<u>Name</u>	<u>Complete Address</u>	<u>Deceased?</u>	<u>TPR?</u>	<u>Surrender?</u>
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Birth mother:

Birth father:

³ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

⁴ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

⁵ Unless the Court has ordered the address to be confidential on the ground that disclosure would pose an unreasonable health or safety risk. See Family Court Act §154-b; Form 21 (available at www.nycourts.gov).

Person with whom
the subject resides,
if other than parents:

Adult next of kin, if
birth parents are dead:

Other [specify]: ⁶

8. (Upon information and belief) [check applicable box(es)]:

a. Appointing me as the kinship guardian (in conjunction with the Subsidized Kinship Guardian Program) permanent guardian would be in [subject's name]: best interests and would preserve his/her legal rights because [specify facts regarding the suitability, ability and commitment of the proposed guardian to assume full legal responsibility and raise him/her to adulthood]:

b. (i) In related proceedings regarding the above-named child [check applicable box]:

[Applicable to related child protective proceedings]: Fact-finding and permanency hearing have been completed pursuant to Family Court Act §§1051 and 1089;

[Applicable to voluntary foster care, juvenile delinquency, PINS and freed-child proceedings]: A permanency hearing has been completed pursuant to Family Court Act §§355.5, 756-a or 1089;

(ii) I am related to the child through blood, marriage, or adoption as follows [specify]:

(iii) I have been caring for the child as a fully certified or approved foster parent since [specify date]: , which is at least six consecutive months prior to [specify date] , the date of my application to the local social services district for kinship guardianship assistance payments..

(iv).[Check applicable box]: Care and custody guardianship and custody have been awarded to [specify local social services district, including county if outside New York City, or authorized child care agency]:

The local social services district and I have a fully executed (signed) agreement to provide kinship guardianship assistance payments for the child under title ten of article six of the social services law.

(v) Referral for legal guardianship is an appropriate permanency goal for the child because the child is strongly attached to me and because I am committed to permanently caring for the child and raising the child to adulthood. [Specify supporting facts and circumstances]:

⁶ Include Mental Hygiene Legal Services, if the subject of the proceeding is mentally retarded or developmentally disabled and has been admitted to a facility, and any person entitled to notice of or consent to the adoption of the subject of the proceeding.

(vi). The following compelling reasons exist for determining that neither return home nor adoption of the child are in the best interests of the child and are, therefore, not appropriate permanency goals for the child [specify]:

c. [Required where appointment of permanent guardian is also requested, pursuant to Family Court Act §661(b) or S.C.P.A. §1702(2); delete if inapplicable]:

(i) [Check applicable box]:

guardianship and custody have been committed to the following authorized agency [specify, include whether by surrender or termination of parental rights and attach certified copies of the orders terminating parental rights or approving the surrenders, as applicable]:

both parents of the child, whose consent to or notice of an adoption would have been required, are deceased [attach death certificates].

(ii) The local social services district performed an assessment, as required by S.C.P.A. §1704(8), that recommended the following [specify and attach a copy of the assessment]:

9: [Applicable to cases in which child protective (abuse or neglect) petition or permanency hearing report⁷ has been filed regarding the children; delete if inapplicable]:

a. A child protective (abuse or neglect) petition, Docket # [specify]: _____, was filed in Family Court, [specify county]: _____ on [specify date]: _____ alleging that [specify names of respondents on that petition]:

neglected or abused the above-named child(ren). The petition resulted in [specify whether finding was made and, if so, the disposition; if the disposition has been adjourned pending a hearing jointly with this petition, pursuant to F.C.A. §1055-b, so indicate and give next court date]:

b. A permanency report, Docket # [specify]: _____, in a child protective (abuse or neglect), voluntary foster care, PINS, juvenile delinquency or freed-child permanency proceeding, was filed in Family Court, [specify county]: _____ on [specify date]:

indicating the following permanency goal [specify]: _____ with Petitioner in this proceeding. The permanency hearing was adjourned to [specify date and indicate if the Court ordered the hearing to be held jointly with this petition, pursuant to F.C.A. §1089-a]:

⁷ The permanency hearing report may relate to a child protective, voluntary foster care, juvenile delinquency, PINS or freed-child proceeding.

c. The child's birth mother has has not consented to the award of guardianship to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek guardianship of the child(ren) [specify]:

d. The child's legally-established birth father has has not consented to the award of guardianship to the Petitioner. If not, the following extraordinary circumstances support Petitioner's standing to seek guardianship of the child(ren) [specify]:

10. (Upon information and belief) No guardian pursuant to will or deed, or guardian of the person pursuant to Section 384 or 384-b of the Social Services Law, has been previously appointed for the subject of this proceeding, except [specify]:

11. Upon information and belief, [Check all applicable box(es)]:

a. I have never been the subject of an indicated report, as such term is defined in of the Social Services Law §412, that has been filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

I was the subject of an indicated report, as defined in of the Social Services Law §412, that was filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the date of the report, date of determination that report was "indicated," status and circumstances to the extent known]:

I am the subject of a report, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remains under investigation. [Specify the date of the report, status and circumstances to the extent known]:

b. I have never been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act.

I have been the subject of, or the respondent in, a child protective proceeding pursuant to Article Ten of the Family Court Act. [Specify whether the proceeding resulted in an order finding that a child or children was/were abused or neglected, indicate whether the subject of this proceeding was found to be abused or neglected and provide the date and status of the proceeding to the extent known]:

c. I have never been the subject of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

I have been the subject of an Order of Protection or Temporary Order of Protection in a criminal, matrimonial or Family Court proceeding(s) as follows [specify the court, docket or index number, whether I was protected or restrained by the order, date of order, expiration date of order, next court date and status of case to the extent known]:

12. Upon information and belief,[check applicable box(es)]:

a. The following adults who are age 18 or older live in my home:

<u>Name</u>	<u>Relationship, if any, to subject of proceeding</u>	<u>Date of Birth</u>
-------------	---	----------------------

b. None of the adults 18 or older living in my home has ever been the subject of any indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422.

The following adults 18 or older living in my home have been the subjects of indicated reports, as defined in of the Social Services Law §412, that were filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422. [Specify the name(s) of the adults, date(s) of the report(s), whether the subject of this proceeding was the subject of the report(s), status and circumstances to the extent known]:

The following adults 18 or older living in my home are the subjects of reports, as defined in of the Social Services Law §412, filed with the statewide register of child abuse and maltreatment pursuant Social Services Law §422, that remain under investigation [Specify the name(s) of the adults, whether the subject of this proceeding is the subject of the report(s), date(s) of the report(s), status and circumstances to the extent known]:

c. None of the adults 18 or older living in my home has ever been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the Family Court Act.

The following adults 18 or older living in my home have been the subjects of, or the respondents in, child protective proceedings pursuant to Article Ten of the Family Court Act, as follows [Specify the names of the adults, whether the proceedings have resulted in orders finding that the child is an abused or neglected child, whether the subject of this proceeding was a subject of those proceedings and the date and status of the proceedings to the extent known]:

d. None of the adults 18 or older living in my home has ever been the subjects of an Order of Protection or Temporary Order of Protection in any criminal, matrimonial or Family Court proceeding(s).

The following adults 18 or older living in my home have been the subjects of Orders of Protection or Temporary Orders of Protection in criminal, matrimonial or Family Court proceeding(s), as follows [specify the names of the adults, whether the adults are or were restrained or protected by the order(s), court, docket or index number, date of order, expiration date of order, next court date and status of cases to the extent known]:

13. The birth parent(s) of the child [specify]:
although living, should not be appointed guardian of the person of the child because:

14. a. [Applicable where the subject of the proceeding is 18 years of age or older; check box if inapplicable]: The person who is the subject of this proceeding is over the age of 18 and has consented to my appointment as the guardian, a copy of which is attached.

b. [Applicable where the child is over 14 years of age but less than 18; check box if applicable]: The child, who is over the age of 14, has [check applicable box]: expressed a preference for expressed no preference regarding opposed my appointment as the guardian. A copy of the child's preference form is attached.

15. I would like to designate the following adult 18 years of age or older as the successor guardian [specify]: _____, who may petition for guardianship in the event of my death or incapacity. This individual has has not yet been evaluated and approved as successor guardian by the local department of social services and has has not been named in the original or amended kinship guardianship agreement. This designation would be in the best interests of the child because [specify]: _____

16. There are no persons interested in this proceeding other than those mentioned above.

17. No prior application has been made to any court, including a Native-American tribunal, for the relief requested herein (except [specify]: _____).

WHEREFORE, Petitioner requests that an order be entered appointing me to be the [check one or both boxes]:

kinship guardian in conjunction with the NYS Subsidized Kinship Guardian Program

permanent guardian of [specify]: _____

until the child reaches 18 21 upon his/her consent,⁸ and that letters of guardianship be issued to me.

Dated:

Signature of Petitioner

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

⁸ If Petitioner is appointed as a kinship guardian, payments under the Subsidized Kinship Guardian program continue until the child is 21 only if the subsidized kinship guardianship agreement with the social services district became effective after the child's 16th birthday and the social services district determines that the child is: (i) completing secondary education or a program leading to an equivalent credential; (ii) enrolled in an institution which provides post-secondary or vocational education; (iii) employed for at least eighty hours per month; (iv) participating in a program or activity designed to promote, or remove barriers to, employment; or (v) incapable of any of such activities due to a medical condition, which incapability is supported by regularly updated information in the child's case plan.

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF)

,being duly sworn, says that (s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to (his)(her) own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Sworn to before me this
day of

Petitioner

(Deputy)Clerk of the Court
Notary Public

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

Proceedings for the Appointment of a
 Guardian of the Person
 Standby Guardian
 Permanent Guardian
 Kinship Guardian
(subsidized kinship guardian program)

Docket No.
Family File No.
 CONSENT OF PERSON
OVER 18 YEARS OF AGE
 PREFERENCE OF MINOR
OVER 14 YEARS OF AGE REGARDING
APPOINTMENT OF GUARDIAN

of
A Person Under the Age of 21

State of New York :

: ss.:

County of :

I am the person under the age of 21 who is the subject of this proceeding. I was born on [specify date and year of birth]:

[Check applicable box(es)]:

I am over the age of 18, I have read the petition and believe it to be true and I consent to the appointment of [specify name of proposed guardian]:

as the: Guardian of my Person Standby Guardian Permanent Guardian

Kinship Guardian (subsidized kinship guardian program)¹ until I reach the age of 21.

I am over the age of 14 and under the age of 18, I have read the petition and believe it to be true, and I [check applicable box]: join in oppose do not have a preference regarding the request for the appointment [specify name of proposed guardian]: as the:

Guardian of my Person Standby Guardian Permanent Guardian Kinship Guardian (subsidized kinship guardian program).

Sworn to this ___ day
of _____,

(Deputy Clerk of the Court)
(Notary Public)

Signature of Subject of Proceeding

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

¹ While the appointment of the guardian continues until I reach the age of 21, I understand that payments under the subsidized kinship guardian program will only continue if the application for payments was made after my 16th birthday AND the social services district determines that: (i) I am completing secondary education or a program leading to an equivalent credential; (ii) I am enrolled in an institution providing post-secondary or vocational education; (iii) I am employed for at least eighty hours per month; (iv) I am participating in a program or activity designed to promote, or remove barriers to, employment; or (v) I am incapable of any of the above activities due to a medical condition regularly documented in my case plan.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

.....
Proceedings for the Appointment of a
 Guardian Standby Guardian of the Person

Docket No.

of

a Minor

WAIVER OF PROCESS,
RENUNCIATION OR
CONSENT TO
 GUARDIANSHIP
 STANDBY GUARDIANSHIP

.....
The undersigned _____, who resides at [specify
address]:¹

and whose interest in the above-entitled proceeding is as follows [check applicable box]:

- Parent of the above-named Minor.
- Grandparent of the above-named Minor.
- Other [specify]:

personally appears in the _____ Court of _____ County and [check
applicable box(es)]:

- renounces all rights to Letters of Guardianship of the person of the Minor; and
- waives the issuance and service of process in this matter; and
- consents that [specify proposed guardian or standby guardian]: _____ be

appointed the Guardian Standby Guardian of the person of the Minor; and that Letters of Guardianship
may be granted to the above-named person or to any other person entitled to such appointment without
notice to the undersigned.

Signature)

Print or Type Name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

Sworn to before me this _____
day of _____, _____.

(Deputy)Clerk of the Court
Notary Public

¹ Unless ordered confidential pursuant to Family Court Act § 154-b.

LETTERS OF GUARDIANSHIP OF THE PERSON OF A MINOR

Docket No.

THE PEOPLE OF THE STATE OF NEW YORK

KNOW ALL BY THESE PRESENTS that at the County of _____ on the _____ day of _____, before Honorable _____, Judge of the Family Court of this County, having duly qualified according to law, is hereby authorized to serve as guardian of the person of a Minor, and Letters of Guardianship are hereby granted to said _____.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Family Court of the County of _____ to be hereunto affixed.

Witness: Honorable _____, Judge of the Family Court, County of _____, at the Family Court of _____ County, the day of _____, _____.

Clerk of the Family Court.

New York Family Court Act §661

§661. Jurisdiction

When initiated in the family court, such court has like jurisdiction and authority to determine as county and surrogates courts in proceedings regarding the guardianship of the person of a minor or infant and permanent guardianship of a child. Such jurisdiction shall apply as follows:

(a) Guardianship of the person of a minor or infant. When making a determination regarding the guardianship of the person of a minor or infant, the provisions of the surrogate's court procedure act shall apply to the extent they are applicable to guardianship of the person of a minor or infant and do not conflict with the specific provisions of this act. For purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twentyone years old who consents to the appointment or continuation of a guardian after the age of eighteen.

(b) Permanent guardianship of a child. Where the guardianship and custody of a child have been committed to an authorized agency pursuant to section six hundred fourteen of this article, or section three hundred eighty-three-c, section three hundred eighty-four or section three hundred eighty-four-b of the social services law, or where both parents of a child whose consent to the adoption of the child would have been required pursuant to section one hundred eleven of the domestic relations law or who were entitled to notice of an adoption proceeding pursuant to section one hundred eleven-a of the domestic relations law are dead, the court may appoint a permanent guardian of a child if the court finds that such appointment is in the best interests of the child. The provisions of the surrogate's court procedure act shall apply to the extent that they are applicable to a proceeding for appointment of a permanent guardian of a child and do not conflict with the specific provisions of this act. Such permanent guardian of a child shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child, and may consent to the adoption of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law.

(c) Special provisions in relation to guardianship of a foster child. Where the permanency goal for a foster child who is the subject of a proceeding under article ten or ten-A of this act is referral for legal guardianship, a petition under this article filed by a fit and willing relative or other suitable person shall be filed with the court before whom the most recent proceeding under article ten or ten-A of this act is pending. The court presiding over the proceeding pursuant to article ten or ten-A of this act may consolidate the hearing of the guardianship petition or permanent guardianship petition filed by such relative or other suitable person with the dispositional hearing under article ten of this act or a permanency hearing under article ten-A of this act, as applicable. In granting such a petition, the court must make such order in accordance with the procedures and make the findings enumerated in section one thousand fifty-five-b or one thousand eighty-nine-a of this act, as applicable.

the 1990s, the number of people in the world who are poor has increased from 1.1 billion to 1.5 billion.

There are a number of reasons for this. One is that the world population has increased from 5 billion to 6 billion.

Another reason is that the world economy has not grown fast enough to keep pace with the population increase.

And a third reason is that the rich countries have not done enough to help the poor countries.

But there is also a fourth reason, and that is that the poor countries have not done enough to help themselves.

They have not invested enough in education and health care, and they have not managed their resources well.

So, the world is a poorer place than it was in the 1990s, and it is becoming poorer all the time.

But there is still hope. If we can find ways to help the poor countries, we can make the world a better place.

And that is what we need to do now.

So, let's all do our part to help the poor.

And let's all work together to make the world a better place.

That's what we need to do.

And that's what we can do.

So, let's all do our part.

And let's all work together.

That's what we need to do.

And that's what we can do.

So, let's all do our part.

And let's all work together.

And let's all do our part to help the poor.

And let's all work together to make the world a better place.

That's what we need to do.

And that's what we can do.

So, let's all do our part.

And let's all work together.

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And that's what we can do.

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And let's all work together.

That's what we need to do.

And that's what we can do.

So, let's all do our part.

And let's all work together.

That's what we need to do.

And that's what we can do.

So, let's all do our part.

And let's all work together.

That's what we need to do.

Custody

Custody is a long-term option similar to guardianship, typically used by parents or other close family members.

If the parties agree about custody of the child, the court may enter an order of custody on consent, if the parties do not agree, the court will hold a hearing. The standard (as with guardianship) is best interest of the child.

An order of joint custody is an option when the court determines that parties can share a child's care and custody.

More information is available at:

https://www.nycourts.gov/courts/nyc/family/faqs_custodyandvisitation.shtml

<http://nycourts.gov/courthelp//Family/custodyFiling.shtml>

Attachments:

- General Form 17 – Petition for Custody, Visitation
- General Form 18 – Sample Order on Petition for Custody or Visitation
- New York Family Court Act 651
- New York Family Court Act 657 – Certain provisions relating to the guardianship and custody of children by persons who are not the parents of such children

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

.....
In The Matter of a Proceeding for
Custody Visitation under Article 4 5 6
of the Family Court Act or Section 240
of the Domestic Relations Law

Petitioner
Relationship to child:

Family File No.
Docket No.
PETITION
 CUSTODY VISITATION

-against-

Respondent
Relationship to child:

.....
TO THE FAMILY COURT:

The Petitioner respectfully alleges upon information and belief that:

1. The name, gender, current address and date of birth of each child who is the subject of this proceeding are as follows [specify address or indicate if ordered to be kept confidential pursuant to Family Court Act §154-b(2) or Domestic Relations Law §254]:

<u>Name</u>	<u>Gender</u>	<u>Date of Birth</u>	<u>Current Address</u>	<u>Name of Person with Whom Child Resides</u>
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2. a. Petitioner, _____, [check applicable box]: resides is located at [specify address or indicate if ordered to be kept confidential pursuant to Family Court Act §154-b(2) or Domestic Relations Law §254]:

b. Petitioner is [specify relationship to child; if foster parent, agency, institution or other relationship, so state]:

3. a. Respondent, _____, [check applicable box]: resides is located at [specify address or indicate if ordered to be confidential, pursuant to Family Court Act §154-b(2) or Domestic Relations Law §254]:

b. Respondent is [specify relationship to child; if foster parent, agency, institution or other relationship, so state]:

4. **[Check box if applicable, o0r if not, SKIP to ¶5]** (Upon information and belief) For any

¹ Note: If a custody or visitation proceeding is pending in, or an order of custody or visitation has been issued by, a court outside of the State of New York, including a Native-American tribunal, the custody/visitation petition for proceedings under the *Uniform Child Custody Jurisdiction and Enforcement Act*, Form UCCJEA-1 should be utilized instead of this form. If a prior order of custody or visitation had been entered by a Court of this State, the petition for modification or enforcement, General Forms 40 or 41, should be used instead of this form.

child listed in ¶(1) above who resided at the current address and/or with the current person for two years or less, specify where and with whom the child lived during the two years prior to that time [specify address or indicate if ordered to be kept confidential pursuant to Family Court Act §154-b(2) or Domestic Relations Law §254]:

<u>Name of Child</u>	<u>Child's Address</u>	<u>Duration</u> (from/to)	<u>Name of Person</u> <u>With Whom Child</u> <u>Resided</u>	<u>Current Address</u> <u>of the Person With</u> <u>Whom Child Resided</u>
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5. [Applicable when Petitioner and/or Respondent is on active military duty or has recently returned from active military service; check box(es) if applicable, or if not, SKIP to Paragraph 6]:

a. Petitioner is on active duty, deployed or temporarily assigned to military service as follows [specify type of service, military branch or National Guard unit, anticipated dates and location of duty and how duty is likely to affect custody or visitation, if at all]:²

Petitioner returned from active duty, deployment or temporary assignment to military service as follows [specify date of return, type of service, military branch or National Guard unit and how return from duty is likely to affect custody or visitation, if at all]:

b. Respondent is on active duty, deployed or temporarily assigned to military service as follows [specify type of service, military branch or National Guard unit and how return from duty is likely to affect custody or visitation, if at all]:³

Respondent returned from active duty, deployment or temporary assignment to military service as follows [specify date of return, type of service, military branch or National Guard unit, anticipated dates and location of duty and how duty is likely to affect custody or visitation, if at all]:

6. [Check box(es) if applicable; or if not, SKIP to Paragraph 7]: An order was issued by Court, County, State of , referring the issue of custody visitation to the Family Court of the State of New York in and for the County of [specify]:

7. [Check applicable box(es)]:

a. The father of the child(ren) who (is)(are) the subject(s) of this proceeding is [specify]:
 The father was married to the child(ren)'s mother at the time of the conception or birth.
 An order of filiation was made on [specify date and court and attach true copy]:
 An acknowledgment of paternity was signed on [specify date]: by [specify who signed and attach a true copy]:
 The father is deceased.

b. The father of the child(ren) who (is)(are) the subject(s) of this proceeding has not been legally established.

² Inapplicable if Petitioner is based at a permanent duty station or has had a permanent reassignment of station.

³ Inapplicable if Respondent is based at a permanent duty station or has had a permanent reassignment of station.

c. A paternity agreement or compromise, pursuant to former Family Court Act §516,⁴ was approved by the Family Court of _____ County on _____, _____, concerning [name parties to agreement or compromise _____ and child(ren)]:
A true copy of the agreement or compromise is attached to this petition.

8. [Applicable to cases in which either parent is not a party; check box if applicable, or if not, SKIP to Paragraph 9]: The name and address of a parent or parents who are not parties to this proceeding are: [specify; indicate if deceased or if address(es) ordered to be kept confidential pursuant to Family Court Act §154-b(2) or Domestic Relations Law §254]:

9. [Check box if applicable, or if not, SKIP to Paragraph 10]: Petitioner has participated as a party witness other capacity [specify]: _____ in other litigation concerning the custody of the same children in New York State Other jurisdiction [specify]:⁵
If so, specify type of case, type of participation, court, location and status of case.

10. a. A custody or visitation proceeding concerning the same child(ren) is is not pending in New York State. [If pending, give court docket number and status of case]:

b. A custody or visitation proceeding concerning the same child(ren) is is not pending in a jurisdiction outside New York State. [If pending, specify where, court docket number and status of case]:

11. [Check box if applicable, or if not, SKIP to Paragraph 12]: The custody or visitation of the child(ren) has been agreed upon in the following custody, separation or guardianship agreement, dated [specify, and attach copy]:

12. [Check box(es) if applicable, or if not, SKIP to Paragraph 13]:

a. Petitioner Respondent obtained custody of the child(ren) on [specify date]: _____, as follows:

b. Petitioner Respondent obtained visitation with the child(ren) on [specify date]: _____, as follows:

13. It would be in the best interests of the child(ren) for Petitioner to have custody visitation for the following reasons [specify]:

14. [Check box(es) if applicable, or if not, SKIP to Paragraph 15]:

a. An Order of Protection or Temporary Order of Protection was issued [check applicable

⁴ The agreement or compromise must have been signed prior to the repeal of FCA §516 on May 19, 2009.

⁵ If litigation occurred in Native-American tribunal, so indicate.

box(es): against Respondent against me in the following criminal, matrimonial and/or Family Court proceeding(s) [specify the court, docket or index number, date of order, next court date and status of case, if available]:

The Order of Protection Temporary Order of Protection expired or will expire on [specify date]:

b. Petitioner requests a Temporary Order of Protection pursuant to Family Court Act §655 because [specify]:

15. [Applicable where one or more parties are not parents of the child(ren); if not, SKIP to Paragraph 16]]: The subject child(ren) are are not Native-American child(ren) who may be subject to the *Indian Child Welfare Act* (25 U.S.C. §§ 1901-1963).

16. INSERT ADDENDUM where a child abuse, child neglect or destitute child petition and/or a permanency hearing report has been filed regarding the child(ren) and in which Petitioner is a Respondent parent, Non-respondent parent, relative or other non-parent; if not, SKIP to Paragraph 17].

17. No previous application has been made in any court, including a Native-American tribunal, or to any judge for the relief herein requested, (except:

WHEREFORE, Petitioner requests an order awarding custody visitation of the child(ren) to the Petitioner and for such other and further relief as the Court may determine.

Dated:

Petitioner

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

VERIFICATION

STATE OF NEW YORK)
 :ss:
COUNTY OF)

being duly sworn, says that (s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to (his)(her) own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Petitioner

Sworn to before me this
 day of

(Deputy) Clerk of the Court
Notary Public

ADDENDUM (Paragraph 16)

[REQUIRED where a child abuse, child neglect or destitute child petition and/or a permanency hearing report has been filed regarding the child(ren) and where Petitioner is a Respondent parent, Non-respondent parent, relative or other non-parent; check applicable box(es)];

a. A child protective petition, Docket # [specify]: _____, was filed in Family Court, [specify county]: _____ on [specify date]: _____ alleging that [specify names of respondents on that petition]: _____

neglected or abused the above-named child(ren). The petition resulted in [specify whether finding was made and, if so, the disposition; if the disposition has been adjourned pending a consolidated hearing with this petition, pursuant to F.C.A. §1055-b, so indicate and give next court date]: _____

b. A destitute child petition, Docket # [specify]: _____, was filed in Family Court, [specify county]: _____ on [specify date]: _____. The petition resulted in [specify whether finding was made and, if so, the disposition; if the disposition has been adjourned pending a consolidated hearing with this petition, pursuant to F.C.A. §1096, so indicate and give next court date]: _____

c. A permanency report, Docket # [specify]: _____, pursuant to Article 10-A of the Family Court Act, was filed in Family Court, [specify county]: _____ on [specify date]: _____ indicating a permanency plan of custody of the child(ren) with Petitioner in this proceeding. The permanency hearing was adjourned to [specify date]: _____ pending a consolidated hearing with this petition, pursuant to F.C.A. §1089-a.

d. Termination of the order placing or remanding the child(ren) pursuant to Article 10, 10-A or 10-C of the Family Court Act will not jeopardize the child(ren)'s safety, will provide the child

with a safe and permanent home and is in the best interests of the child(ren) for the following reasons [specify]:

[Applicable to cases where Petitioner is a Respondent or a Non-respondent parent in a child protective or destitute child dispositional or permanency planning proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check box(es) if applicable]:

e. The child’s other parent has has not consented to custody with the Petitioner.

f. The following non-parent [specify]: _____ of the child has has not objected to custody with Petitioner. If objecting to custody, the non-parent has not demonstrated extraordinary circumstances.

[Applicable to cases where Petitioner is a relative or other non-parent, who appeared in a child protective or destitute child dispositional or permanency proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check box(es) if applicable]:

g. The child’s birth mother has has not consented to the award of custody to the Petitioner. If not, the following extraordinary circumstances support Petitioner’s standing to seek custody of the child(ren) [specify]:

h. The child’s legally-established birth father has has not consented to the award of custody to the Petitioner. If not, the following extraordinary circumstances support Petitioner’s standing to seek custody of the child(ren) [specify]:

i. The child has been living with the following foster parent(s)[specify]: _____ since [specify date]: _____ The foster parent(s) has/have has/have not consented to the award of custody to the Petitioner. [If unaware whether they have consented, so state]:

j. The local department of social services [specify]: _____ in the related child abuse or neglect destitute child permanency proceeding has has not consented to the award of custody to the Petitioner. [If unaware whether they have consented, so state]:

k. The attorney for the child(ren) [specify]: _____ in the related child abuse or neglect destitute child permanency proceeding has has not consented to the award of custody to the Petitioner. [If unaware whether he or she has consented, so state]:

F.C.A §§651, 652, 654;
D.R.L §240

General Form 18
(Order on Petition for Custody or Visitation)
6/2016

At a term of the Family Court of the State of New York
held in and for the County of _____, at
New York, on _____,

PRESENT:

Hon.
Judge

.....

In the Matter of a Proceeding for
 Custody Visitation under
 Article 6 of the Family Court Act
 Section 240 of the Domestic Relations Law

Family File No.:
Docket No.

- FINAL ORDER
- TEMPORARY ORDER
ON PETITION FOR
- CUSTODY
- VISITATION

Petitioner,
against -
Respondent

.....
**NOTICE: YOUR WILLFUL FAILURE TO OBEY THIS ORDER MAY RESULT IN
INCARCERATION FOR CRIMINAL CONTEMPT.**

The Petitioner herein having filed a petition on [specify date]: _____, _____, pursuant to
 Article 6 of the Family Court Act Section 240 of the Domestic Relations Law, requesting an order of
 custody visitation of the following minor children [list each child as follows]:

Name of Child: _____ Date of Birth: _____

[Check applicable box(es)]:

And the Respondent having been served not been served with a copy of the petition, and
having been advised by the Court of the right to counsel, and
having appeared not appeared before this Court to answer the petition
and to show cause why it should not be granted; and
having consented not consented to the relief requested in the petition;

And the Court having searched the statewide registry of orders of protection, the sex offender
registry and the Family Court's warrant and child protective records, and having notified the attorneys for the
parties and for the child [check if applicable]: and the following self-represented party or parties [specify]:
_____ of the results of these searches;

And the Court having considered and relied upon the following results of these searches in
making this decision [specify; if no results found, so indicate]:

[Required in cases involving Native-American children where petitioner and/or respondent

are not parents of the child; check box if applicable and attach Addendum to Order (General Form GF-32 - Findings of Fact and Conclusions of Law – Indian Child Welfare Act):

- And the following having been duly notified [check applicable box(es)]:
 - parent/custodian tribe/nation [REQUIRED]
 - United States Secretary of the Interior [REQUIRED if tribal contact undetermined];

- And the tribe/nation having: appeared and participated as a party;
- appeared and declined to assume jurisdiction;
 - appeared and requested transfer of jurisdiction;¹
 - not appeared;

And the required findings of fact and conclusions of law having been made pursuant to the *Indian Child Welfare Act* and having been attached in an **Addendum** to this Order;

[Applicable to TEMPORARY orders only where less than 90 days have elapsed since last record review]: And the Court, having dispensed with the search of the statewide registry of orders of protection, the sex offender registry and the Family Court’s warrant and child protective records because these databases had been reviewed within the past 90 days;

[Applicable where a party had made an allegation of domestic violence or child abuse; findings must be stated on the record, included in a written decision OR included in this order; check applicable box]:

- And the Court having explained its findings on alleged domestic violence or child abuse on the record;
- And the Court having issued a written decision containing its findings on alleged domestic violence or child abuse;
- And the Court having found that the allegation that [specify party]:
 - had committed domestic violence or child abuse against [specify party or child(ren)]:
 - was was not proven by a preponderance of the evidence, and having considered the effect of such domestic violence or child abuse upon the best interests of the child(ren) and relevant facts and circumstances as follows in making this order [specify how findings, facts and circumstances were factored into this Order]:

[Applicable where hearing was heard jointly with hearing of Family Court Act Article 6 custody or guardianship petition, pursuant to Family Court Act §1055-b; CHECK BOX if applicable]:

- And the hearing having been heard jointly with the custody guardianship petition, Docket # [specify]:

[NOTE: Attach or insert the ADDENDUM TO FINDINGS OF FACT to this form where Petitioner or Respondent is a Respondent, Non-respondent parent, relative or other non-parent in a child protective, destitute child dispositional or permanency proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096]

AND THE MATTER HAVING DULY COME ON TO BE HEARD BEFORE THIS COURT, NOW, after examination and inquiry into the facts and circumstances of the case and after hearing the proofs and testimony offered in relation thereto, this Court finds and determines that:

¹ If an oral application was made or a written petition was filed requesting transfer of the case to a tribal court, an order determining the request, General Form GF-20, must also be issued.

[For modification cases: delete if inapplicable]:² The following change of circumstances has occurred since the entry of the order judgment, dated [specify]: _____, of custody visitation [specify change in circumstances]: _____

And this Court further finds and determines that [specify]: _____

And it is therefore ORDERED that the best interests of the above-named child or children require [check applicable box(es)]: custody visitation to be as follows [specify]: _____

_____ ; and it is further

[Applicable to cases involving a party or parties in the military; check box(es) if applicable]:

ORDERED that, since Petitioner Respondent is on active duty, deployed or temporarily assigned to military service and since such service affects such party's ability to act as a joint or primary custodian of the child(ren), the return of such party from such active duty shall constitute a substantial change of circumstances sufficient to entitle such party to a review of this Order for possible modification if in the child(ren)'s best interests, unless the parties and child(ren)'s attorney have otherwise stipulated or agreed; and it is further

ORDERED that during the period of active military service, deployment or temporary assignment, the party on such duty shall be permitted the following contact and visitation with the child [specify, including electronic communication and visitation during military leaves]: _____

_____ ; and it is further

[Applicable to cases where hearing was consolidated with child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check box if applicable]:

ORDERED that the following local department of social services [specify]: _____ and the following attorney for the child(ren)[specify]: _____ shall be notified and shall be made parties to any subsequent proceedings for modification, enforcement or termination of the Order; and it is further

[Applicable in cases involving Native-American child where petitioner and/or respondent are not parents of the child; check box(es) if applicable]:

- ORDERED** that the following should be notified of this proceeding [specify]: _____ the custodian of the child; tribe/nation; United States Secretary of the Interior
- ORDERED** that in light of the assumption of jurisdiction by the tribe/nation, this petition is **DISMISSED WITHOUT PREJUDICE**; (and it is further)

[Applicable to temporary orders]: **This Order shall expire** [check applicable box]: _____

² Form 40-a, the Order on Petition for Modification, may be used instead of this form in modification cases.

on the following date [specify]: upon issuance of a further or final order in this case.

AND IT IS FURTHER ORDERED that [specify]:

ENTER

Dated:

Judge of the Family Court

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]: _____

Order received in court on [specify date(s) and to whom given]: _____

ADDENDUM TO FINDINGS OF FACT³

[Applicable to cases where Petitioner or Respondent is a Respondent or Non-respondent parent in a child protective or destitute child dispositional or permanency planning proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check applicable box(es)]:

Termination of the order placing or remanding the child(ren) pursuant to Article 10, 10-A or 10-C of the Family Court Act will will not not jeopardize the child(ren)'s safety, will provide the child with a safe and permanent home and is is not in the best interests of the child(ren).

[Applicable to cases where Petitioner or Respondent is a Respondent in a child protective or destitute child dispositional or permanency planning proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check applicable box(es)]:

The following non-parent of the child [specify non-parent]: _____ has objected to custody with Petitioner Respondent and has has not demonstrated extraordinary circumstances. If demonstrated, the following extraordinary circumstances support the non-parent's standing to seek custody of the child(ren) [specify]: _____

If the non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody is is not in the child's best interests.

[Applicable where child's other parent is NOT the Petitioner or Respondent in the custody

³ This addendum must be used where the Family Court Act Article 6 custody order is issued in conjunction with, or as a resolution of, a child protective, destitute child or permanency proceeding.

proceeding; check box if applicable]: The child's other parent has has not consented to custody with the Petitioner Respondent. If the child's other parent has failed to consent to such custody, this Court finds that granting such custody is is not in the child's best interests.

Applicable to cases where Petitioner or Respondent is a relative or other non-parent, who appeared in a child protective or destitute child dispositional or permanency proceeding and where the hearing in the child custody matter was consolidated with the child protective or destitute child dispositional or permanency hearing, pursuant to F.C.A. §§1055-b, 1089-a or 1096; check applicable box(es)]:

Termination of the order placing or remanding the child(ren) pursuant to Article 10, 10-A or 10-C of the Family Court Act will will not not jeopardize the child(ren)'s safety, will provide the child with a safe and permanent home, and is is not in the best interests of the child(ren).

The child(ren)'s birth mother has has not consented to custody of the child with the relative or other non-parent. If demonstrated, the following extraordinary circumstances support the relative's or other non-parent's standing to seek custody of the child(ren) [specify]:

If the relative or other non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody is is not in the child's best interests.

The child's legally-established birth father has has not consented to custody of the child with the relative or other non-parent. If demonstrated, the following extraordinary circumstances support the relative's or other non-parent's standing to seek custody of the child(ren) [specify]:

If the relative or other non-parent has demonstrated extraordinary circumstances, this Court finds that granting such custody is is not in the child's best interests.

The child has been living with the following foster parent(s)[specify]:
for a period in excess of one year, who has/have has/have not consented to custody of the child with the relative or other non-parent.

The local department of social services, the petitioner in the related child abuse or neglect destitute child permanency proceeding has has not consented to custody of the child with the relative or other non-parent.

The attorney for the child(ren) [specify]: _____ in the related child abuse or neglect destitute child permanency proceeding has has not consented to custody of the child with the relative or other non-parent.

New York Family Court Act §§ 651, 657

§651. Jurisdiction over habeas corpus proceedings and petitions for custody and visitation of minors

(a) When referred from the supreme court or county court to the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors.

(b) When initiated in the family court, the family court has jurisdiction to determine, in accordance with subdivision one of section two hundred forty of the domestic relations law and with the same powers possessed by the supreme court in addition to its own powers, habeas corpus proceedings and proceedings brought by petition and order to show cause, for the determination of the custody or visitation of minors, including applications by a grandparent or grandparents for visitation or custody rights pursuant to section seventy-two or two hundred forty of the domestic relations law.

(c) When initiated in the family court pursuant to a petition under part eight of article ten of this act or section three hundred fifty-eight-a of the social services law, the family court has jurisdiction to enforce or modify orders or judgments of the supreme court relating to the visitation of minors in foster care, notwithstanding any limitation contained in subdivision (b) of section four hundred sixty-seven of this act.

(c-1) Where a proceeding filed pursuant to article ten or ten-A of this act is pending at the same time as a proceeding brought in the family court pursuant to this article, the court presiding over the proceeding under article ten or ten-A of this act may jointly hear the hearing on the custody and visitation petition under this article and the dispositional hearing on the petition under article ten or the permanency hearing under article ten-A of this act; provided, however, the court must determine the custody and visitation petition in accordance with the terms of this article.

(d) With respect to applications by a grandparent or grandparents for visitation or custody rights, made pursuant to section seventy-two or two hundred forty of the domestic relations law, with a child remanded or placed in the care of a person, official, agency or institution pursuant to the provisions of article ten of this act, the applicant, in such manner as the court shall prescribe, shall serve a copy of the application upon the social services official having care and custody of such child, and the child's attorney, who shall be afforded an opportunity to be heard thereon.

(e)

1. Permanent and initial temporary orders of custody or visitation. Prior to the issuance of any permanent or initial temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in paragraph three of this subdivision.

2. Successive temporary orders of custody or visitation. Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a

review of the decisions and reports listed in paragraph three of this subdivision, unless such a review has been conducted within ninety days prior to the issuance of such order.

3. Decisions and reports for review. The court shall conduct a review of the following:

(i) related decisions in court proceedings initiated pursuant to article ten of this act, and all warrants issued under this act; and

(ii) reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

4. Notifying counsel and issuing orders. Upon consideration of decisions pursuant to article ten of this act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

5. Temporary emergency order. Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to paragraph three of this subdivision.

6. After issuing a temporary emergency order. After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to paragraph three of this subdivision within twenty-four hours of the issuance of such temporary emergency order. Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session. Upon reviewing decisions and reports the court shall notify associated counsel, self-represented parties and attorneys for children pursuant to paragraph four of this subdivision and may issue temporary or permanent custody or visitation orders.

7. Feasibility study. The commissioner of the office of children and family services, in conjunction with the office of court administration, is hereby authorized and directed to examine, study, evaluate and make recommendations concerning the feasibility of the utilization of computers in family courts which are connected to the statewide central register of child abuse and maltreatment established and maintained pursuant to section four hundred twenty-two of the social services law, as a means of providing family courts with information regarding parties requesting orders of custody or visitation. Such commissioner shall make a preliminary report to the governor and the legislature of findings, conclusions and recommendations not later than January thirty-first, two thousand nine, and a final report of findings, conclusions and recommendations not later than June first, two thousand nine, and shall submit with the reports such legislative proposals as are deemed necessary to implement the commissioner's recommendations.

(f) Military service by parent; effect on child custody orders.

1. During the period of time that a parent is activated, deployed or temporarily assigned to military service, such that the parent's ability to continue as a joint caretaker or the primary caretaker of a minor child is materially affected by such military service, any orders issued pursuant to this section, based on the fact that the parent is activated, deployed or temporarily assigned to military service, which would materially affect or change a previous judgment or order regarding custody of that parent's child or children as such judgment or order existed on the date the parent was activated, deployed, or temporarily assigned to military service, shall be subject to review pursuant to paragraph three of this subdivision. Any relevant provisions of the Service Member's Civil Relief Act shall apply to all proceedings governed by this section.

2. During such period, the court may enter an order to modify custody if there is clear and convincing evidence that the modification is in the best interests of the child. An attorney for the child shall be appointed in all cases where a modification is sought during such military service. Such order shall be subject to review pursuant to paragraph three of this subdivision. When entering an order pursuant to this section, the court shall consider and provide for, if feasible and if in the best interests of the child, contact between the military service member and his or her child including, but not limited to, electronic communication by e-mail, webcam, telephone, or other available means. During the period of the parent's leave from military service, the court shall consider the best interests of the child when establishing a parenting schedule, including visiting and other contact. For such purpose, a "leave from military service" shall be a period of not more than three months.

3. Unless the parties have otherwise stipulated or agreed, if an order is issued pursuant to this subdivision, the return of the parent from active military service, deployment or temporary assignment shall be considered a substantial change in circumstances. Upon the request of either parent, the court shall determine on the basis of the child's best interests whether the custody judgment or order previously in effect should be modified.

4. This subdivision shall not apply to assignments to permanent duty stations or permanent changes of station.

§657. Certain provisions relating to the guardianship and custody of children by persons who are not the parents of such children

(a) Notwithstanding any provision of the law to the contrary, a person possessing a lawful order of guardianship or custody of a minor child, who is not the parent of such child, may enroll such child in public school in the applicable school district where he or she and such child reside. Upon application for enrollment of a minor child by a guardian or custodian who is not the parent of such child, a public school shall enroll such child for such time as the child resides with the guardian or custodian in the applicable school district, upon verification that the guardian or custodian possess a lawful order of

guardianship or custody for such child and that the guardian or custodian and the child properly reside in the same household within the school district.

(b) Notwithstanding any provision of law to the contrary, persons possessing a lawful order of custody of a child who are not a parent of such child shall have the same right to enroll and receive coverage for such child in their employer based health insurance plan and to assert the same legal rights under such employer based health insurance plans as persons who possess lawful orders of guardianship of the person for a child pursuant to rule twelve hundred ten of the civil practice laws and rules, article seventeen of the surrogate's court procedure act, or part 4 of this article.

(c) Notwithstanding any other provision of law to the contrary, persons possessing a lawful order of guardianship of a child shall have the right and responsibility to make decisions, including issuing any necessary consents, regarding the child's protection, education, care and control, health and medical needs, and the physical custody of the person of the child. Provided, however, that nothing in this subdivision shall be construed to limit the ability of a child to consent to his or her own medical care as may be otherwise provided by law.

Standby Guardianship

Standby Guardianship allows a parent suffering from a progressively chronic illness or an irreversibly fatal illness to designate a guardian for his or her child, to become effective upon the parent's incapacity or death. (At this time Standby Guardianship is not available for other purposes.) A Standby Guardianship can be created in advance in order to establish a system of emergency care for the child when the parent's health deteriorates.

A Standby Guardianship can be created in two ways:

1) The parent can petition either Surrogate's or Family Court for the appointment of a standby guardian. Each court provides its own form. The form must state when the guardianship becomes effective (upon the parent's incapacity, death or consent) and that the parent suffers from a fatal illness, and provide the basis for that statement. A parent need not disclose the illness itself, only the date and source of the diagnosis.

2) An alternative method is to complete the form provided for by SCPA §1726(4) signed before two witnesses. This Standby Guardianship becomes effective upon the parent's incapacity, death or consent. However, once effective, the Standby Guardianship will only remain in effect for 60 days. Within those 60 days, the standby guardian must file a petition seeking a guardianship order from an appropriate court. If the standby guardian does not file within those 60 days, Standby Guardianship authority will cease.

Please note that when deciding between Family Court and Surrogate Court in New York, the two have "similar jurisdiction and authority regarding the guardianship of the child. However, only the Surrogate's Court has jurisdiction over petitions for guardianships of the child's property.

More information can be found at:

https://www.nycourts.gov/courts/nyc/family/faqs_guardianship.shtml

Attachments:

- Standby Guardianship Appointment Form from SCPA §1726(4)(b)(iii)
- Form Standby Guardianship Petition for Family Court
- Form Family Court Order Appointing Standby Guardian
- Form Standby Guardianship Petition for Surrogate's Court
- SCPA §1726

Designation of Standby Guardian Form
(from New York Surrogate's Court Procedure Act §1726)

(NOTE: As used in this form, the term "parent" shall include a parent, a court-appointed guardian of an infant's person or property, a legal custodian, or a primary caretaker, and the term " child(ren)" shall include the dependant [sic] infant of a parent, court-appointed guardian, legal custodian or primary caretaker)

I _____ (name of parent) hereby designate
_____, residing at _____

(name, home address and telephone number of standby guardian) as standby guardian of
the person and property of my child(ren) (name of child(ren)).

(You may, if you wish, provide that the standby guardian's authority shall extend only to the person, or only to the property, of your child, by crossing out "person" or "property", whichever is inapplicable, above.)

The standby guardian's authority shall take effect: (1) if my doctor concludes in writing that I am mentally incapacitated, and thus unable to care for my child(ren); (2) if my doctor concludes in writing that I am physically debilitated, and thus unable to care for my child(ren) and I consent in writing, before two witnesses, to the standby guardian's authority taking effect; or (3) upon my death.

In the event the person I designate above is unable or unwilling to act as guardian for my child(ren), I hereby designate (name, home address and telephone number of alternate standby guardian), as standby guardian of my child(ren).

I also understand that my standby guardian's authority will cease sixty days after commencing unless by such date he or she petitions the court for appointment as guardian.

I understand that I retain full parental, guardianship, custodial or caretaker rights even after the commencement of the standby guardian's authority, and may revoke the standby guardianship at any time.

Signature: _____

Address: _____

Date: _____

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign and asked another to sign this document, who did so in my presence. I further declare that I am at least eighteen years old and am not the person designated as standby guardian.

Witness' Signature: _____

Address: _____

Date: _____

Witness' Signature: _____

Address: _____

Date: _____

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

.....

Proceeding for the Appointment of a
Standby Guardian of the Person

Docket No.

of

_____, a Minor

PETITION
(Appointment of
Standby Guardian)

.....

TO THE FAMILY COURT:

The Petitioner respectfully alleges to this Court that:

1. The name and domicile of the Petitioner and relationship of the Petitioner to the child who is the subject of this proceeding, are as follows:

Name:

Relationship to child [check applicable box]:

mother father guardian legal custodian primary caretaker

Address [Include street, city, village or town, county and state]:

2. The name, date of birth and domicile of the child who is the subject of this proceeding are as follows:

Name:

Date of Birth:

Address: [Including street, city, village or town, county and state]

3. The subject child (is)(is not) a Native American child subject to the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963).

4.The residence of the child and name and relationship of the person(s) with whom the child resides are as follows:

Person with whom child resides [specify name]:

Relationship to child [check applicable box]:

mother father guardian legal custodian primary caretaker

Address [Include street, city, village or town, county and state]:

5. This petition seeks appointment of a Standby Guardian of the person of the child who is the

subject of this proceeding, to become effective upon the petitioner's (incapacity) (death) (incapacity or death, whichever occurs first).¹

6. On information and belief, petitioner suffers from a progressively chronic or fatal illness. The source of information and basis for belief are:

7. The religion of the child is

8. The names, relationship and post office addresses of the child's parent(s), the name and address of the person(s) with whom the child resides, if other than the parent(s), to whom process should issue; and such other persons concerning whom the court is required to have information, are as follows: (If a parent is deceased, so allege)

<u>Relationship</u>	<u>Name</u>	<u>Post Office Address</u>
---------------------	-------------	----------------------------

Mother:

Father:

Person with whom
Child resides, if
other than parents:

Other:²

9. To protect and preserve the legal rights of the child, it is necessary that some proper person be duly appointed the Standby Guardian of (his)(her) person, because:

10. (Upon information and belief) No Guardian pursuant to Section 383-c, 384 or 384-b of the Social Services Law, or Standby Guardian pursuant to section 1726 of the Surrogate's Court Procedure Act, has been previously appointed for the child except [specify]:

11. (a). Petitioner (has)(does not have) knowledge that the person nominated to be a

¹ S.C.P.A. Section 1726(3)(I); delete inapplicable provisions.

²Include Mental Hygiene Legal Services if child is a mentally retarded or developmentally disabled person admitted to a facility.

standby guardian herein is the subject of an indicated report, as such term is defined in Section 412 of the Social Services Law, filed with the statewide register of child abuse and maltreatment pursuant to Title Six of Article Six of the Social Services Law. If so, specify date, status and circumstances to the extent known:

(b). Petitioner (has)(does not have) knowledge that the person nominated to be a standby guardian] herein is the subject of or the respondent in a child protective proceeding commenced under Article Ten of the Family Court Act. If so, specify whether proceeding resulted in an order finding that the child is an abused or neglected child, date and status to the extent known:

(c). Petitioner (has)(does not have) knowledge that an Order of Protection or Temporary Order of Protection (has)(has not) been issued against the person nominated to be a guardian herein in any criminal, matrimonial or Family Court proceeding(s). If such an order has been issued, specify the court, docket or index number, date of order, expiration date or order, next court date and status of case to the extent known:

12 (a). The following adults aged 18 or older reside with the proposed guardian:

<u>Name</u>	<u>Relationship, if any, to Child</u>	<u>Date of Birth</u>
-------------	---------------------------------------	----------------------

(b). Upon information and belief, (none of the above adults) (the following adult(s)[specify]:
) (is)(are) the subject of an indicated report, as such term is defined in Section 412 of the Social Services Law, filed with the statewide register of child abuse and maltreatment pursuant to Title Six of Article Six of the Social Services Law. If so, specify date, status and circumstances to the extent known:

(c). Upon information and belief, (none of the above adults) (the following adult(s)[specify]:
) (has) (have) been the subject of or the respondent in a child protective proceeding commenced under Article 10 of the Family Court Act. If so, specify whether proceeding resulted in an order finding that the child is an abused or neglected child, date and status to the extent known:

(d). Upon information and belief, an Order of Protection or Temporary Order of Protection (has)(has not) been issued against any of the above adults in any criminal, matrimonial or Family Court proceeding(s). If such an order has been issued, specify the adult against whom the order was issued, the court that issued the order, docket number, date of order, expiration date of order, next court date and status of case to the extent known:

13. _____, residing at _____, whose

religion is _____ would be a suitable and proper person to be appointed Standby Guardian of the person of the Child, in that:

14. Attached hereto is the consent of the proposed Standby Guardian to being appointed Standby Guardian of the person of the child.

(15. [Delete if inapplicable]: The parent(s) of the child, although living, should not be appointed Standby Guardian of the person of the child because: _____).

16. There are no persons interested in this proceeding other than those here in above mentioned.

17. No prior application has been made to any court for the relief herein requested.

WHEREFORE, Petitioner respectfully requests that an order be entered appointing [specify]: as Standby Guardian of the person of the child upon Petitioner's death (or incapacity, whichever occurs first). [Delete if inapplicable. See S.C.P.A. §1726(3)].

Dated:

Signature of Petitioner

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF)

_____, being duly sworn, says that b(s)he is the Petitioner in the above-named proceeding and that the foregoing petition is true to (his)(her) own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters (s)he believes it to be true.

Petitioner

Sworn to before me this

day of , .

(Deputy) Clerk of the court
Notary Public

F.C.A. §661
S.C.P.A. §§ 1707, 1726

Form 6-9
(Order Appointing
Standby Guardian
of a Person)
8/2010

At a term of the Family Court of the
State of New York, held in and for the
County of _____,
at _____ New York
on _____,

P R E S E N T:
Hon.

Proceedings for the Appointment of
a Standby Guardian of the Person
of

Docket No.

ORDER APPOINTING
STANDBY GUARDIAN
OF THE PERSON

_____, A Minor

Upon reading and filing the petition, duly verified on _____, applying for the
appointment of a Standby Guardian of the person of the above-named child; and it appearing that the
petitioner suffers from a progressively chronic or fatal illness; and that the interests of the child will be
promoted by the appointment of a Standby Guardian of (his)(her) person; and that [specify]:

is in all respects competent to act as such

Standby Guardian; it is hereby

ORDERED that [specify]: _____ is appointed Standby
Guardian of the person of the child, whose authority shall be effective upon (receipt of a determination
of Petitioner's incapacity) (receipt of the certificate of Petitioner' death) (upon receipt of a
determination of Petitioner's incapacity or certificate of Petitioner's death, whichever occurs first)
[delete inapplicable provision].

The authority of the Standby Guardian shall also be effective upon the Petitioner's written
consent pursuant to Section 1726(3) of the Surrogate's Court Procedure Act (and it is further)

(ORDERED that

).

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT,
AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN
30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT,
35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO
APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER
SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD
UPON THE APPELLANT, WHICHEVER IS EARLIEST.

ENTER

JUDGE OF THE FAMILY COURT

Dated: _____

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

New York Surrogate's Court Procedure Act §1726 (Full Text)

1. For the purpose of this section:

(a) "Standby guardian" means (i) a person judicially appointed pursuant to subdivision three of this section as standby guardian of the person and/or property of an infant whose authority becomes effective upon the incapacity or death of the infant's parent, legal guardian, legal custodian or primary caretaker or upon the consent of the parent, legal guardian, legal custodian or primary caretaker; and (ii) a person designated pursuant to subdivision four of this section as standby guardian whose authority becomes effective upon the death or incapacity of the infant's parent, legal guardian, legal custodian or primary caretaker or upon the debilitation and consent of the parent, legal guardian, legal custodian or primary caretaker.

(b) "Legal guardian" means the court-appointed guardian of the infant's person and/or property.

(c) "Attending physician" means the physician who has primary responsibility for the treatment and care of the infant's parent, legal guardian, legal custodian or primary caretaker. Where more than one physician shares such responsibility, or where a physician is acting on the attending physician's behalf, any such physician may act as the attending physician pursuant to this section. Where no physician has such responsibility, any physician who is familiar with the parent's, legal guardian's, legal custodian's or primary caretaker's medical condition may act as the attending physician pursuant to this section.

(d) "Debilitation" means a chronic and substantial inability to care for one's dependent infant, as a result of (i) a progressively chronic or irreversibly fatal illness, or (ii) a physically debilitating illness, disease or injury. "Debilitated" means the state of having a debilitation.

(e) "Incapacity" means a chronic and substantial inability, as a result of mental impairment, to understand the nature and consequences of decisions concerning the care of one's dependent infant, and a consequent inability to care for such infant. "Incapacitated" means the state of having an incapacity.

2. The provisions of this article relating to guardians shall apply to standby guardians, except insofar as this section provides otherwise.

3. (a) A petition for the judicial appointment of a standby guardian of the person and/or property of an infant pursuant to this subdivision may be made only by a parent, a legal guardian of the infant or a legal custodian of the infant; or where the infant is not residing with a parent, legal guardian or legal custodian and, to the satisfaction of the court, such parent, legal guardian or legal custodian cannot be located with due diligence, the primary caretaker of such infant may petition for a judicial appointment of such standby guardian. Application for standing to petition as a primary caretaker shall be upon motion to the court upon notice to such parties as the court may direct.

(b) A petition for the judicial appointment of a standby guardian of an infant shall, in addition to meeting the requirements of section seventeen hundred four of this article:

(i) State whether the authority of the standby guardian is to become effective upon the petitioner's incapacity, upon the petitioner's death, upon the petitioner's consent, or upon whichever occurs first;

(ii) State that the petitioner suffers from (A) a progressively chronic illness or (B) an irreversibly fatal illness and the basis for such statement, such as the date and source of a medical diagnosis, without requiring the identification of the illness in question.

(c) Upon a petition for the judicial appointment of a standby guardian of an infant pursuant to paragraph (a) of this subdivision or for the judicial appointment of a guardian pursuant to paragraph (d) of subdivision four of this section, the court shall conduct a hearing. The court may in its discretion dispense with a hearing for the appointment of a standby guardian, and may in its discretion appoint a guardian ad litem to recommend whether the appointment of a standby guardian as proposed in the application is in the best interest of the infant.

(d)(i) If the court finds that the petitioner suffers from a progressively chronic illness or an irreversibly fatal illness and that the interests of the infant will be promoted by the appointment of a standby guardian of the person and/or property it must make a decree accordingly.

(ii) Such decree shall specify whether the authority of the standby guardian is effective upon the receipt of a determination of the petitioner's incapacity, upon the receipt of the certificate of the petitioner's death, or other such evidence of death that may be satisfactory to the court, or upon whichever occurs first, and shall also provide that the authority of the standby guardian may earlier become effective upon written consent of the parent pursuant to subparagraph (iii) of paragraph (e) of this subdivision.

(iii) If at any time prior to the commencement of the authority of the standby guardian the court finds that the requirements of subparagraph (i) of this paragraph are no longer satisfied, it may rescind such decree.

(e)(i) Where the decree provides that the authority of the standby guardian is effective upon receipt of a determination of the petitioner's incapacity, the standby guardian's authority shall commence upon the standby guardian's receipt of a copy of a determination of incapacity made pursuant to subdivision six of this section. The standby guardian shall file a copy of the determination of incapacity with the court that issued the decree within ninety days of the date of receipt of such determination or the standby guardian's authority may be rescinded by the court.

(ii) Where the decree provides that the authority of the standby guardian is effective upon receipt of a certificate of the petitioner's death, or other

such evidence of death that may be satisfactory to the court, the standby guardian's authority shall commence upon the standby guardian's receipt of a certificate of death, or other such evidence of death as may be specified in the decree. The standby guardian shall file the certificate of death, or other such evidence of death, with the court that issued the decree within ninety days of the date of the petitioner's death or the standby guardian's authority may be rescinded by the court.

(iii) Notwithstanding subparagraphs (i) and (ii) of this paragraph, a standby guardian's authority shall commence upon the standby guardian's receipt of the petitioner's written consent to such commencement, signed by the petitioner in the presence of two witnesses at least eighteen years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written consent on the petitioner's behalf and at the petitioner's direction if the petitioner is physically unable to do so, provided such consent is signed in the presence of the petitioner and the witnesses. The standby guardian shall file the written consent with the court that issued the decree within ninety days of the date of receipt of such written consent or the standby guardian's authority may be rescinded by the court.

(f) The petitioner may revoke a standby guardianship created under this subdivision by executing a written revocation, filing it with the court that issued the decree, and promptly notifying the standby guardian of the revocation.

(g) A person judicially appointed standby guardian pursuant to this subdivision may at any time before the commencement of his or her authority renounce the appointment by executing a written renunciation and filing it with the court that issued the decree, and promptly notifying the petitioner of the revocation.

4. (a) A parent, a legal guardian, a legal custodian, or primary caretaker under the circumstances described in paragraph (a) of subdivision three of this section may designate a standby guardian by means of a written designation, signed by the parent, legal guardian, legal custodian or primary caretaker in the presence of two witnesses at least eighteen years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written designation on the parent's, legal guardian's, legal custodian's or primary caretaker's behalf and at the parent's, legal guardian's, legal custodian's or primary caretaker's direction if the parent, legal guardian, legal custodian or primary caretaker is physically unable to do so, provided the designation is signed in the presence of the parent, legal guardian, legal custodian or primary caretaker and the witnesses.

(b)(i) A designation of a standby guardian shall identify the parent, legal guardian, legal custodian or primary caretaker, the infant and the person designated to be the standby guardian, and shall indicate that the parent, legal guardian, legal custodian or primary caretaker intends for the standby guardian to become the infant's guardian in the event the parent, legal guardian, legal

custodian or primary caretaker either: (A) becomes incapacitated; (B) becomes debilitated and consents to the commencement of the standby guardian's authority; or (C) dies prior to the commencement of a judicial proceeding to appoint a guardian of the person and/or property of an infant.

(ii) A parent, legal guardian, legal custodian or primary caretaker may designate an alternate standby guardian in the same writing, and by the same manner, as the designation of a standby guardian.

(iii) A designation may, but need not, be in the following form:

Attached, please see [tab [x]], [above].

(iv) Notwithstanding paragraphs (a) and (b) of this subdivision, a designation of standby guardian shall be effective as if made in accordance with the requirements of this subdivision if it was validly made: (a) where the parent, legal guardian, legal custodian or primary caretaker was domiciled at the time it was executed; (b) in the jurisdiction where it was executed or (c) where the parent, legal guardian, legal custodian or primary caretaker is domiciled at the time the designation becomes effective.

(c) The authority of the standby guardian under a designation shall commence upon either: (i) the standby guardian's receipt of a copy of a determination of incapacity made pursuant to subdivision six of this section; (ii) the standby guardian's receipt of (A) a copy of a determination of debilitation made pursuant to subdivision six of this section and (B) a copy of the parent's, legal guardian's, legal custodian's or primary caretaker's written consent to such commencement, signed by the parent, legal guardian, legal custodian or primary caretaker in the presence of two witnesses at least eighteen years of age, other than the standby guardian, who shall also sign the writing. Another person may sign the written consent on the parent's, legal guardian's, legal custodian's or primary caretaker's behalf and at the parent's, legal guardian's, legal custodian's or primary caretaker's direction if the parent, legal guardian, legal custodian or primary caretaker is physically unable to do so, provided such consent is signed in the presence of the parent, legal guardian, legal custodian or primary caretaker and the witnesses; or (iii) the standby guardian's receipt of a certificate of death, funeral home receipt or other such document indicating that the parent, legal guardian, legal custodian or primary caretaker has died. The standby guardian shall file a petition pursuant to paragraph (d) of this subdivision within sixty days of the date of its commencement pursuant to this paragraph or such standby guardian's authority shall cease after such date, but shall recommence upon such filing.

(d) The standby guardian may file a petition for appointment as guardian after receipt of either: (i) a copy of a determination of incapacity made pursuant to subdivision six of this section; or (ii) (A) a copy of a determination of debilitation made pursuant to subdivision six of this section and (B) a copy of the parent's,

legal guardian's, legal custodian's or primary caretaker's written consent, pursuant to paragraph (c) of this subdivision; or (iii) a certificate of death, or other such evidence of death that may be satisfactory to the court. Such petition must, in addition to meeting the requirements of section seventeen hundred four of this article:

(i) append the written designation of such person as standby guardian; and

(ii) append a copy of: (A) the determination of incapacity of the parent, legal guardian, legal custodian or primary caretaker; or (B) the determination of debilitation and the parental, guardian's, custodian's or caretaker's consent; or (C) a copy of the parent's, legal guardian's, legal custodian's or primary caretaker's death certificate, or other such evidence of death that may be satisfactory to the court; and

(iii) if the petition is by a person designated as alternate standby guardian, state that the person designated as standby guardian is unwilling or unable to act as standby guardian, and the basis for such statement.

(e) Subject to the provisions of paragraph (c) of subdivision three of this section, if the court finds that the petitioner was duly designated as standby guardian, that the parent, legal guardian, legal custodian or primary caretaker of the infant is incapacitated, debilitated and consents or has died, as established by a copy of a death certificate or other such evidence of death as may be satisfactory to the court, that the interests of the infant will be promoted by the appointment of a standby guardian of the person and/or property, and that, if the petition is by a person designated as alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian, it must make a decree accordingly.

(f) The parent, legal guardian, legal custodian or primary caretaker may revoke a standby guardianship created under this subdivision: (i) by executing a subsequent designation of guardianship pursuant to paragraphs (a) and (b) of this subdivision, or (ii) notwithstanding the provisions of sections seventeen hundred ten and seventeen hundred eleven of this article, in the case of a standby guardian whose authority becomes effective upon the death of the parent, legal guardian, legal custodian or primary caretaker of the infant, by a subsequent designation of standby guardian set forth in a will of the parent, legal guardian, legal custodian or primary caretaker, or (iii) by notifying the standby guardian verbally or in writing or by any other act evidencing a specific intent to revoke the standby guardianship prior to the filing of a petition. Where the petition has already been filed, by executing a written revocation, filing it with the court where the petition was filed, and promptly notifying the standby guardian of the revocation.

5. The standby guardian may also file a petition for appointment as guardian in any other manner permitted by this article or article six of the family court act, on notice to

the parent, legal guardian, legal custodian or primary caretaker and may append a designation of standby guardian to the petition for consideration by the court in the determination of such petition.

6. (a) A determination of incapacity or debilitation must: (i) be made by the attending physician to a reasonable degree of medical certainty; (ii) be in writing; and (iii) contain the attending physician's opinion regarding the cause and nature of the parent's, legal guardian's, legal custodian's or primary caretaker's incapacity or debilitation as well as its extent and probable duration. The attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian, if the standby guardian's identity is known to the physician.

(b) If requested by the standby guardian, an attending physician shall make a determination regarding the parent's, legal guardian's, legal custodian's or primary caretaker's incapacity or debilitation for purposes of this section.

(c) The standby guardian shall ensure that the parent, legal guardian, legal custodian or primary caretaker is informed of the commencement of the standby guardian's authority as a result of a determination of incapacity and of the parent's, legal guardian's, legal custodian's or primary caretaker's right to revoke such authority promptly after receipt of the determination of incapacity, provided there is any indication of the person's ability to comprehend such information.

7. The commencement of the standby guardian's authority pursuant to a determination of incapacity, determination of debilitation, or consent shall not, itself, divest the parent, legal guardian, legal custodian or primary caretaker of any parental, guardianship, custodial or caretaker rights, but shall confer upon the standby guardian concurrent authority with respect to the infant.

8. (a) The clerk of any county upon being paid the fees allowed therefor by law shall receive for filing any instrument appointing or designating a standby guardian pursuant to this section made by a domiciliary of the county, and shall give a written receipt therefor to the person delivering it. The filing of an appointment or designation of standby guardian shall be for the sole purpose of safekeeping and shall not affect the validity of the appointment or designation.

(b) The appointment or designation shall be delivered only to: (i) the parent, legal guardian, legal custodian or primary caretaker who appointed or designated the standby guardian; (ii) the standby guardian or alternate standby guardian; (iii) the person designated as standby guardian or alternate standby guardian; or (iv) any other person directed by the court.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion.

There are a number of reasons why the world's population is growing so rapidly. One of the main reasons is that the number of children born to each woman has increased. This is due to a number of factors, including the fact that women are now having children at a younger age, and that there are more children surviving to adulthood.

Another reason why the world's population is growing so rapidly is that the number of people who are surviving to old age has increased. This is due to a number of factors, including the fact that people are now living longer, and that there are more people surviving to old age.

There are a number of other reasons why the world's population is growing so rapidly. One of the main reasons is that the number of people who are migrating to other parts of the world has increased. This is due to a number of factors, including the fact that people are now moving to other parts of the world in search of better opportunities.

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Power of Attorney

Power of Attorney is a tool regarding the assets of the person granting the power. Power of attorney is provided for under New York General Obligations Law. (§§5-1501-1514).

Power of attorney can become effective immediately or on the occurrence of a future event. §5-1501B(3).

Attachments

Sample Short Form Power of Attorney Form, also available at:
<http://www.nysba.org/CustomTemplates/Content.aspx?id=6554>



**POWER OF ATTORNEY
NEW YORK STATUTORY SHORT FORM**

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the “principal,” you give the person whom you choose (your “agent”) authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. “Important Information for the Agent” at the end of this document describes your agent’s responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a “Health Care Proxy” to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, www.senate.state.ny.us or www.assembly.state.ny.us.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) DESIGNATION OF AGENT(S):

I, _____
(name of principal) *(address of principal)*

hereby appoint:

(name of agent) *(address of agent)*

(name of second agent) *(address of second agent)*

as my agent(s).



If you designate more than one agent above, they must act together unless you initial the statement below.

() My agents may act SEPARATELY.

(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)

If any agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

(name of successor agent)

(address of successor agent)

(name of second successor agent),

(address of second successor agent)

Successor agents designated above must act together unless you initial the statement below.

() My successor agents may act SEPARATELY.

You may provide for specific succession rules in this section. Insert specific succession provisions here:

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under "Modifications".

(e) This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previously executed by me unless I have stated otherwise below, under "Modifications".

If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in this Power of Attorney as you granted to another agent in a prior Power of Attorney, each agent can act separately unless you indicate under "Modifications" that the agents with the same authority are to act together.

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either

- (1) Initial the bracket at each authority you grant, or
- (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- () (A) real estate transactions;
- () (B) chattel and goods transactions;
- () (C) bond, share, and commodity transactions;
- () (D) banking transactions;
- () (E) business operating transactions;
- () (F) insurance transactions;



- (G) estate transactions;
- (H) claims and litigation;
- (I) personal and family maintenance: If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five hundred dollars;
- (J) benefits from governmental programs or civil or military service;
- (K) health care billing and payment matters; records, reports, and statements;
- (L) retirement benefit transactions;
- (M) tax matters;
- (N) all other matters;
- (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
- (P) EACH of the matters identified by the following letters: _____.

You need not initial the other lines if you initial line (P).

(g) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.

(h) CERTAIN GIFT TRANSACTIONS: STATUTORY GIFTS RIDER (OPTIONAL)

In order to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), you must initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider should be supervised by a lawyer.

(SGR) I grant my agent authority to make gifts in accordance with the terms and conditions of the Statutory Gifts Rider that supplements this Statutory Power of Attorney.

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)

If you wish to appoint monitor(s), initial and fill in the section below:

I wish to designate _____, whose address(es) is (are) _____, as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL)

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your



behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define "reasonable compensation", you may do so above, under "Modifications".

() My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES:

I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) TERMINATION:

This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law.

Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on the ___ day of _____, 20__

PRINCIPAL signs here: =====> _____

STATE OF NEW YORK)
) ss:
COUNTY OF _____)

On the ___ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(n) IMPORTANT INFORMATION FOR THE AGENT:

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record of all receipts, payments, and transactions conducted for the principal; and



(5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manners: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or anyone else or make gifts to yourself or anyone else unless the principal has specifically granted you that authority in this document, which is either a Statutory Gifts Rider attached to a Statutory Short Form Power of Attorney or a Non-Statutory Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest.

You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent: The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

(o) AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

Agent(s) sign(s) here: ==> _____
==> _____

STATE OF NEW YORK)
)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public



(p) SUCCESSOR AGENT’S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the SUCCESSOR agent(s), if any, sign at the same time, nor that multiple SUCCESSOR agents sign at the same time. Furthermore, successor agents can not use this power of attorney unless the agent(s) designated above is/are unable or unwilling to serve.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as SUCCESSOR agent(s) for the principal named therein.

Successor Agent(s) sign(s) here: ==> _____
==> _____

STATE OF NEW YORK)
)
COUNTY OF _____)

ss:

On the ____ day of _____, 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

Sample

Voluntary Foster Care

A child may be placed in foster care voluntarily, at the request of his or her parents or legal guardian. (A child may enter foster care involuntarily, by order of the court.)

Pursuant to New York Social Services Law § 384(1)(a), if unable to care for a child, a parent or guardian may place a child under eighteen in voluntary foster care. The parent may sign what is known as a voluntary placement agreement which generally entails temporary placement of a child into the foster care system. If the child is to remain in foster care for longer than 30 days, the social services agency responsible for supervising the child's foster care must file a petition in Family Court.

A voluntary placement anticipates a temporary arrangement. However, **there are risks attendant to any foster care placement, which could include obstacles to return of the child, or under certain circumstances, even termination of parental rights.**

More information is available at:

https://www.nycourts.gov/courts/7jd/courts/family/case_types/voluntary_foster_care_placement.shtml

Attachments:

- Form 358-a-1 – Petition for Approval of a Placement Instrument
- Form 358-a-4 – Temporary Order Approving Placement Instrument
- Form 358-a-5 – Order of Disposition – Petition for Approval of an Instrument
- New York Social Services Law §§ 358-a, 384

Soc. Serv. Law §§ 358-a, 384,
384-a, 384-c

Form 358-a- 1
(Petition for
Approval of a Placement
Instrument)
8/2010

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

.....
In the Matter of the Application for
Approval of an Instrument concerning

Docket No.

PETITION FOR
APPROVAL OF
A PLACEMENT
INSTRUMENT

CIN #
Pursuant to Section 358-A of the
Social Services Law
.....

**NOTICE: IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT
22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A
PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE
BEFORE THE END OF THE 15-MONTH PERIOD. IF THE PETITION IS
GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR
CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.**

TO THE FAMILY COURT:

The undersigned Petitioner respectfully alleges upon information and belief:

1. The Petitioner is authorized to file this petition in that (s)he is an official of the
 Department of Social Services for [specify]: County
 New York City Administration for Children’s Services,
having (his)(her) office and place of business at [specify]:

2. a . The above-named child is a male female , who was born on [specify]:
b. The names and addresses of the birth parent(s) or legal guardian(s) of the child are as
follows:

Name Address

3. On [specify date]: [specify]: , the child was removed from the home of
, pursuant to a written instrument executed pursuant

to Social Services Law [check applicable box]: 384 384-a(1) 384-a(2)(h)¹ on [specify date]:
by [specify who executed the instrument and relationship(s) to child]:

A copy of the instrument is attached to this petition.

4. (Upon information and belief) The child now resides at [specify]:
and is likely to remain in the care and custody of the Department of Social Services for a period in excess of thirty (30) consecutive days.

5. (Upon information and belief) [Specify name(s)]:
voluntarily executed the attached instrument because (he)(she) (they) (is)(are) unable to make adequate provision for the care, maintenance and supervision of the child in (his)(her)(their) own home for the reasons that [specify]:

6. (Upon information and belief) Continuation of the child in, or return of the child to, the child's home would be contrary to the best interests of the child because [specify facts and reasons]:

This assertion is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

7. a. Reasonable efforts, where appropriate, to prevent or eliminate the need for placement, and, if the child was removed prior to the date of the hearing, to return the child home safely [check applicable box and state reasons as indicated]:

- were made as follows [specify]:
- were not made but the lack of efforts was appropriate [check all applicable boxes]:
 - because of a prior judicial finding that the authorized agency was not required to make reasonable efforts to reunify the child with the parent(s) guardian(s) [specify date of finding]:
 - because [specify other reasons]:
- were not made.

This assertion is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:

¹ A standby placement instrument lasting up to one year in duration, previously approved by the Court, pursuant to Social Services Law §358-a(2)(h)(iii), may provide that the child be transferred into foster care upon the death, debilitation or incapacitation of the parent or legal guardian. See Forms 358-a-6 and 358-a-7. Once the transfer takes place, the status of the child must be reviewed using this form, pursuant to Social Services Law §358-a, and the required "best interests" and "reasonable efforts" findings must be made.

- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

b . [Applicable in cases in which the child's permanency plan is adoption, guardianship or permanent living arrangement other than reunification]: Reasonable efforts to make and finalize the permanency plan of [specify]:

- were made as follows [specify]:
- were not made.

This assertion is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

c. The following impediments exist, if any, to the fulfillment of the child's permanency plan [specify, indicating documentary sources of information, if any]:

8. The permanency plan for the child is as follows:

- reunification with the parent(s) guardian(s) by [specify date]:
- placement for adoption upon filing of a petition to terminate parental rights by [specify date]:
- referral for legal guardianship by [specify name and date]:
- permanent placement with the following fit and willing relative [specify name]: by [specify date]:
- permanent placement in the following alternative planned living arrangement [specify]:
 - with a significant connection to the following adult [specify]:
who is [check applicable box]: willing to be a permanency resource for the child
 under exploration as a permanency resource for the child;
 - OR
 - with a significant connection to an adult not yet identified;

upon documentation, available to the Court, that the following compelling reason(s) indicate(s) that it would not be in the child's best interests to return home, be referred for termination of parental rights and adoption, placed with a fit and willing relative, or placed with a legal guardian [specify compelling reason(s)]:

9. [Required where child is 14 years of age or older]: (Upon information and belief) The services needed, if any, to assist the child to make the transition from foster care to independent living are [specify]:

10. [Applicable where transfer was made pursuant to section 384-a of the Social Services Law] (Upon information and belief) Care and custody of the child has been transferred to the Department of Social Services by means of an instrument executed pursuant to section 384-a of the Social Services Law, and all of the requirements of such section have been satisfied.

11. [Applicable where transfer was made pursuant to section 384-a of the Social Services Law and where waiver was signed]: (Upon information and belief) Pursuant to the attached instrument, [specify]: (has) (have) consented to the jurisdiction of the Family Court over this proceeding and (has)(have) waived service of the petition and notice of this proceeding.)

12. (Upon information and belief) The names and last-known addresses of the child's parents and all other persons required to be given notice of this proceeding pursuant to sections 358-a and 384-c of the Social Services Law are:

<u>Name</u>	<u>Address</u>	<u>Relationship</u>
-------------	----------------	---------------------

and there are no persons other than those set forth who are entitled to notice.

13. The visiting plan(s) for the child and the parent(s) guardian(s) (is)(are) as follows [describe plan(s)]:

14. a. The child has the following sibling(s) or half-sibling(s) [specify, including date of birth and whether in foster care]:

b. The child is is not placed together with such sibling(s) or half-sibling(s) for the following reason(s) [specify reasons not placed together; if placement together is under investigation, so indicate]:

c. [Applicable where child and siblings or half-siblings are not placed together]:
The visiting plan(s) for the child and (his)(her) sibling(s) or half-sibling(s) (is)(are) as follows [describe plan(s)]:

15. a. A visitation order regarding the following non-custodial parents and grandparents is is not incorporated into the placement instrument pursuant to Social Services Law §384-a(2)(d) for the following reason(s) [specify reason(s) if visitation order is not incorporated]:

b. The above-named non-custodial parent(s) and grandparent(s) are are not the subject of an indicated report, as such term is defined in Section 412 of the Social Services Law, filed with the statewide register of child abuse and maltreatment pursuant to Title

Six of Article Six of the Social Services Law. If so, specify date, status and circumstances to the extent known:

c. The above-named non-custodial parent(s) and grandparent(s)

are are not the subject(s) of or the respondent(s) in a child protective proceeding commenced under Article Ten of the Family Court Act. If so, specify whether the proceeding resulted in an order finding that the child is an abused or neglected child, date and status to the extent known:

16. The subject child is is not a Native-American child, who is subject to the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963). If so, the following have been notified [check applicable box(es)]:

- parent/custodian [specify name and give notification date]:
- tribe/nation [specify name and give notification date]:
- United States Secretary of the Interior [give notification date]:

17. [Required]:² Petitioner is required to obtain education information and to provide that information to foster care providers and other parties to this proceeding. Unless otherwise obtained by release, Petitioner thus seeks a court order to obtain the education records (including special education and early intervention records) of each child named in this Petition who is not placed with a parent(s)/legal guardian(s), and a court order to provide such records to service providers where such records are necessary to enable the service provider to establish and implement a plan of service.

18. No previous application has been made to any court or judge for the relief requested herein, (except [specify]: _____).

WHEREFORE, Petitioner requests:

A. That process be served on those entitled thereto in accordance with sections 358-a or 384-c of the Social Services Law;

B. That pending any hearing that the Family Court may require, a temporary order be made approving the transfer of custody and care of the child to the Social Services official of _____ County, pursuant to section 358-a of the Social Services Law;

C. That the Court enter a final order granting the petition approving the annexed instrument and approving the transfer of custody and care to the Social Services official of [specify]: _____ County;

D. That the Court enter an order describing the above visiting plans for the child and (his)(her) parent(s) or guardian(s) and for the child and (his)(her) sibling(s) or half-sibling(s);

² This notice is required by the federal *Family Educational Rights and Privacy Act* [20 U.S.C. § 1232(g)(b)(2)(B)].

E. That the (parent)(guardian) be notified of the planning conference(s) to be held, of (his)(her) right to attend such conference(s) and of (his)(her)right to attend with counsel or other person;

F. That the (parent)(guardian)be given a copy of this Court's order and service plan;

G. That this Court schedule a date certain for a permanency hearing;

H. That the Court grant such other and further relief as the Court may deem just and proper.

Dated:

Signature of Petitioner

Title

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

At a term of the Family Court of the
State of New York, held in and for the
County of _____,
at _____, New York,
on _____,

P R E S E N T:

Hon.
Judge

In the Matter of the Application for
Approval of an Instrument concerning

Docket No.

CIN # _____
Pursuant to Section 358-a of the
Social Services Law

TEMPORARY
ORDER APPROVING
PLACEMENT
INSTRUMENT

NOTICE: IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD. IF THE PETITION IS GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

**THE NEXT COURT DATE IS [specify date/time]:
THE PERMANENCY HEARING SHALL BE HELD ON [specify date/time]:¹**

The petition of an authorized official of the Department of Social Services for [specify]:
County, New York City Administration for Children's Services,
dated [specify]: _____, having been filed with this Court requesting that pending any
hearing that the Court may require, a temporary order be made approving the transfer of custody and
care of the child to the Petitioner, pursuant to Section 358-a(5) of the Social Services Law; and it
appearing that a hearing is required and an immediate hearing on notice is impractical;

¹ The permanency hearing must be scheduled for a date certain not more than eight months from the date of removal of the child from home. If the child has a sibling or half-sibling removed from the home, whose permanency hearing is scheduled before this Court, the date certain shall be the same as the date certain for the sibling's or half-sibling's permanency hearing, unless the sibling or half-sibling was removed on a juvenile delinquency or PINS petition or unless he or she has permanency hearing shall be cancelled.

[Required findings; check applicable boxes and provide case-specific reasons in A , B and C and, if applicable, D, below]:

The Court finds and determines:

A. The [check applicable box]: parent(s)[specify]: guardian(s) [specify]:
of the child are unable to make adequate provision for the care, maintenance and supervision of the child in the child’s own home, based upon the following facts and for the following reasons [specify facts and reasons, including specific documents or evidence supporting findings]:

B. Continuation of the child in, or return of the child to, the child's home would be contrary to the best interests of the child because [specify facts and reasons]:

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

C. Reasonable efforts, where appropriate, to prevent or eliminate the need for placement, and, if the child was removed prior to the date of the hearing, to return the child home safely [check applicable box and state reasons as indicated]:

- were made as follows [specify]:
- were not made but the lack of efforts was appropriate [check all applicable boxes]:
 - because of a prior judicial finding that the authorized agency was not required to make reasonable efforts to reunify the child with the parent(s) guardian(s) [specify date of finding]:
 - because [specify other reasons]:
- were not made.

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

b . [REQUIRED in cases in which the child’s permanency plan is adoption, guardianship or permanent living arrangement other than reunification]: Reasonable efforts to make and finalize the permanency plan of [specify]:

- were made as follows [specify]:
- were not made.

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:

- The report of [specify]: _____, dated [specify]: _____
- Other [specify]: _____

D. [Required in cases involving Native-American children; check if applicable]:

- And the following having been duly notified [check applicable box(es)]:
 - parent/custodian tribe/nation United States Secretary of the Interior;
 And the tribe/nation having: appeared and participated as a party;
 - appeared and declined to assume jurisdiction;
 - appeared and requested transfer of jurisdiction;
 - not appeared;

NOW, therefore, upon the basis of the instrument and the allegations of the petition, it is hereby

ORDERED that pending a hearing and determination of this matter, the temporary care and custody of the child is transferred to the Department of Social Services for [specify]: _____ County, New York City Administration for Children’s Services; and it is further

[Applicable to Native-American Child(ren); check box(es) if applicable]:

- ORDERED that the following should be notified of this proceeding [specify]: _____ the custodian of the child; tribe/nation; United States Secretary of the Interior
- ORDERED that in light of the assumption of jurisdiction by the tribe/nation, this petition is DISMISSED WITHOUT PREJUDICE; (and it is further)

ORDERED that this matter be set down for hearing on [specify date/time]: _____

ENTER

Judge of the Family Court

Dated: _____,

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT,
AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30
DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT,
35 DAYS FROM THE DATE OF MAILING OF THE ORDER
TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS
AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE
CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

At a term of the Family Court of then State of New York,
held in and for the County of _____,
at _____, New York, on _____,

P R E S E N T:

Hon.
Judge

In the Matter of the Application for
Approval of an Instrument concerning

Docket No.

CIN # _____
Pursuant to Section 358-a of the Social Services Law

ORDER OF DISPOSITION--
PETITION FOR APPROVAL
OF AN INSTRUMENT

NOTICE: IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD. IF THE PETITION IS GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

THE NEXT PERMANENCY HEARING SHALL BE HELD ON [SPECIFY DATE/TIME]:¹

The Petition of an authorized official of the Department of Social Services for [specify]:
County, New York City Administration for Children's Services, dated
[specify]: _____, having been filed with the Court requesting approval of an
instrument transferring custody and care of the child to the agency;

And the following person(s) having been duly served with notice of this proceeding and having
been given an opportunity to be heard [check applicable boxes]:

- Parent [specify]::
having appeared with counsel without counsel waived counsel not appeared;
- Parent [specify]::
having appeared with counsel without counsel waived counsel not appeared;
- Guardian(s) [specify]: _____ Appeared: yes no with counsel without counsel

¹Specify a date certain not more than eight months from the date of removal. If the child has a sibling or half-sibling removed from the home, whose permanency hearing is scheduled before this Court, the date certain shall be the same as the date certain for the sibling's or half-sibling's permanency hearing, unless the sibling or half-sibling was removed on a juvenile delinquency or PINS petition or unless he or she has permanency hearing shall be cancelled.

- Petitioner Appeared: yes no
 Prospective adoptive parent(s) [specify]: Appeared: yes no
 Relatives providing care for the child [specify]: Appeared: yes no
 Other [specify]: Appeared: yes no with counsel without counsel;

And the parent(s) [specify]: guardian(s)[specify]:
having by written instrument consented to the jurisdiction of this Court and waived service of the petition and notice of proceeding, and the Court having dispensed with such service [check box(es) if applicable];

And an attorney having been appointed and having appeared to represent the child;

[Required in cases involving Native-American children; check if applicable]:

- And the following having been duly notified [check applicable box(es)]:
 parent/custodian tribe/nation United States Secretary of the Interior;
And the tribe/nation having: appeared and participated as a party;
 appeared and declined to assume jurisdiction;
 appeared and requested transfer of jurisdiction;
 not appeared;

[Note: Required; judicial findings must be made pursuant to I and, if petition is GRANTED, II , III and, if applicable, IV]:

And the matter having duly come on for a hearing before this Court, the Court, after hearing the proof and testimony offered in relation to the case, finds and determines that:

I. Criteria for Approval of Placement Instrument [Check applicable box(es) in A, B and C, below]:

- A. The parent(s) [specify]: guardian(s) [specify]:
 did did not execute such instrument knowingly and voluntarily; and

B. The parent(s) [specify]: guardian(s) [specify]:
 would would not be able to make adequate provision for the care, maintenance and supervision of the child in the home; and

C. The requirements of Social Services Law §384-a have been satisfied (except [specify]).

II. “Best Interests” and “Reasonable Efforts” Findings [check applicable boxes and provide case-specific reasons in A, B and C, below]

- A. Continuation of the child in, or return of the child to, the child's home would be contrary to the best interests of the child because [specify facts and reasons]:

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
 Service Plan, dated [specify]:
 The report of [specify]: , dated [specify]:

Other [specify]:

B. Reasonable efforts, where appropriate, to prevent or eliminate the need for placement, and, if the child was removed prior to the date of the hearing, to return the child home safely [check applicable box and state reasons as indicated]:

- were made as follows [specify]:
- were not made but the lack of efforts was appropriate [check all applicable boxes]:
 - because of a prior judicial finding that the authorized agency was not required to make reasonable efforts to reunify the child with the parent(s) guardian(s) [specify date of finding]:
 - because [specify other reasons]:
- were not made.

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

C. [REQUIRED in cases in which the child's permanency plan is adoption, guardianship or permanent living arrangement other than reunification]: Reasonable efforts to make and finalize the permanency plan of [specify]:

- were made as follows [specify]:
- were not made.

This determination is supported by the following information [check applicable box(es)]:

- Case Record, dated [specify]:
- Service Plan, dated [specify]:
- The report of [specify]: , dated [specify]:
- Other [specify]:

III. Findings Regarding Relatives and Siblings [Required; check applicable boxes in A and B, below]:

A. Relatives: Based upon the investigation conducted by the Commissioner of Social Services, [Check applicable box(es):

The following person is a suitable person related to the child with whom such child may appropriately reside [specify]:

- Such person: seeks approval as a foster parent in order to provide care for the child;
 wishes to provide care and custody for the child without foster care subsidy at this time.
 may be a resource but not yet determined whether as foster parent or custodian.

There is no suitable person related to the child with whom the child may appropriately reside.

B. Siblings: Based upon the investigation conducted by the Commissioner of Social Services, [Check applicable box(es):

The following sibling(s) or half-sibling(s) are in the care and custody of the Commissioner of

Social Services of [specify]: County [specify]:

Placement of the child with the following sibling(s) or half-sibling(s) [specify]:
would be appropriate and in the children’s best interests [specify]:

Placement of the child with the following sibling(s) or half-sibling(s) [specify]:
would not be in the child’s best interests based upon the following facts and for the following reasons
[specify]:

The following is the plan for visiting and communication with the sibling(s) or half-
sibling(s)[specify]:

Visiting and communication with the sibling(s) or half-sibling(s) would be contrary
to the children’s best interests based upon the following facts and for the following
reasons [specify]:[specify]:

The child has no siblings or half-siblings.

The child has the following siblings or half-siblings [specify]:
who are in the custody of [specify]:

IV. Transitional Services [Required where child is 14 years of age and older]:

The services, if any, needed to assist the child to make the transition from foster care to
independent living are [specify]:

NOW, therefore, it is hereby [check applicable box(es)]:

A. Disposition of Petition [Required; check applicable box]

ORDERED that the petition is GRANTED and the instrument dated [specify]:
and executed by [specify]: is approved and the
custody and care of the child is hereby transferred to the Petitioner ;

OR

ORDERED that the petition is DISMISSED and the child is discharged. and must be returned
forthwith to [specify]: ; (and it is further)

B. Reasonable Efforts [Applicable where petition granted]

[Applicable where the child’s permanency plan is reunification with the parent or guardian]:

ORDERED that following reasonable efforts shall be made to make and finalize the child’s
permanency plan of reunification [specify]:

ORDERED that [specify]: , a social services official a duly
authorized agency, undertake diligent efforts to encourage and strengthen the parental relationship,
including, but not limited to, the following [specify]:

; (and it is further)

**[Applicable where the child’s permanency plan is adoption, guardianship or permanent living
arrangement other than reunification]:**

ORDERED that following reasonable efforts shall be made to make and finalize the child's permanency plan of [specify permanency plan and describe efforts]:

; (and it is further)

C. Relatives, Suitable Persons, Siblings and Half-siblings [Applicable if petition granted]:

ORDERED that the Commissioner of Social Services investigate [specify]:
as a relative or other suitable person with whom the child may reside; (and it is further)

ORDERED that the Commissioner of Social Services investigate placement of the child with the following siblings or half-siblings [specify]: ; (and it is further)

D. Visitation with Parents, Guardians, Grandparents, Siblings and Half-siblings [Required where petition granted]²

ORDERED that Petitioner shall provide the parent(s) (guardian(s) with visitation with the child as follows [describe visitation plan]:

;(and it is further)

[Applicable where Petitioner or the attorney for the child opposed incorporation of a visitation order regarding non-custodial parents or grandparents into the placement instrument]:

ORDERED that the application of Petitioner attorney for the child for the visitation order regarding the following non-custodial parents or grandparents [specify]: not to be incorporated into the placement instrument is hereby granted denied; and the visitation order is incorporated not incorporated modified as follows [specify]:

; (and it is further)

ORDERED that Petitioner shall provide the following sibling(s) or half-sibling(s) of the child with visitation with the child as follows [describe visitation plan]:

; (and it is further)

E. Notice of Planning Conferences, Service of Order and Service Plan [Required in all cases in which the petition is granted]

ORDERED that the parent(s) (guardian(s) be notified of the planning conference or conferences to be held with respect to the child, of the parent(s)' or guardian(s)' right to attend such conference(s) and of the right to be accompanied at such conference(s) by counsel or other person; or (and it is further)

ORDERED that the Petitioner shall serve a copy of this Order and service plan personally by certified mail upon the parent(s) (guardian(s) who executed the

² The visiting plan with the parents or guardians must be described in the order pursuant to Social Services Law §358-a(3)(e). If the Petitioner or attorney for the child oppose incorporation of a visiting order regarding a non-custodial parent or grandparent, this order must contain a determination of that application. See Social Services Law §358-a(10)(b). Further, this order may contain a direction to the Petitioner regarding the findings rendered with respect to the child's placement, visiting and communication with siblings or half-siblings. See Social Services Law §358-a(11).

aforesaid instrument. Such service shall be made within [specify]: _____ days from the date of this order, and shall be accompanied by a notice of the terms and conditions, if any, under which the custody and care of the child may be returned to the parent(s) or guardian(s); (and it is further)

F. Request for Return of Child [Required in all cases in which the petition is granted]

ORDERED that the child shall be returned to the parent(s) (guardian(s) in accordance with the terms and conditions of the placement instrument without further Court order; (and it is further)

G. Native-American Children [Check box if applicable]:

ORDERED that the following should be notified of this proceeding [specify]: _____ the custodian of the child; tribe/nation; United States Secretary of the Interior

ORDERED that in light of the assumption of jurisdiction by the tribe/nation, this petition is DISMISSED WITHOUT PREJUDICE; (and it is further)

H. Date Certain for Permanency Hearing [Required in all cases where petition is granted]

ORDERED that if the child(ren) remain(s) in foster care or in placement with a relative or other suitable person, the next permanency hearing shall be held on [specify date/time]:³

Petitioner shall transmit notice of the hearing and a permanency report no later than 14 days in advance of the above date certain to the parents, other parties, attorneys, the attorney for the child and any pre-adoptive parent or relative providing care to the child(ren) and shall transmit notice of the hearing to former foster parent(s) who have had care of the child(ren) in excess of 12 months.

And it is further ORDERED that

ENTER

Dated:

Judge of the Family Court

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

- Order mailed on [specify date(s) and to whom mailed]: _____
- Order received in court on [specify date(s) and to whom given]: _____

³ See Footnote 1.

New York Social Services Law §§ 358-a, 384

§358-a. Dependent children in foster care

(1) Initiation of judicial proceeding. (a) A social services official who accepts or proposes to accept the custody and guardianship of a child by means of an instrument executed pursuant to the provisions of section three hundred eighty-four of this chapter, or the care and custody of a child as a public charge by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, shall determine whether such child is likely to remain in the care of such official for a period in excess of thirty consecutive days. If such official determines that the child is likely to remain in care for a period in excess of thirty consecutive days, such official shall petition the family court judge of the county or city in which the social services official has his or her office, to approve such instrument upon a determination that the placement of the child is in the best interest of the child, that it would be contrary to the welfare of the child to continue in his or her own home and, that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by this subdivision, reasonable efforts were made to make it possible for the child to return safely home. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, approval of the instrument shall only be made upon an additional determination that all of the requirements of such section have been satisfied.

(b) [Expires and repealed June 30, 2017] The social services official shall initiate the proceeding by filing the petition as soon as practicable, but in no event later than thirty days following removal of the child from the home provided, however, that the court shall receive, hear and determine petitions filed later than thirty days following removal of the child from his or her home, but state reimbursement shall not be available to the social services district for care and maintenance provided to such child. The social services official shall diligently pursue such proceeding. Where the care and custody of a child as a public charge has been transferred to a social services official by means of an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter for a period of thirty days or less for an indeterminate period which such official deems unlikely to exceed thirty days, and thereafter such official determines that such child will remain in his or her care and custody for a period in excess of thirty days, such official shall, as soon as practicable but in no event later than thirty days following such determination, execute with the child's parent, parents or guardian a new instrument pursuant to the provision of section three hundred eighty-four or three hundred eighty-four-a of this chapter and shall file a petition in family court, pursuant to this section, for approval of such instrument. In such cases involving a social services official, expenditures for the care and maintenance of such child from the date of the initial transfer of his care and custody to the social services official shall be subject to state reimbursement.

(2) Contents of petition. (a) Any petition required or authorized pursuant to subdivision one of this section shall allege whether the parent, parents or guardian

executed the instrument because the parent, parents or guardian would be unable to make adequate provision for the care, maintenance and supervision of such child in his or their own home, and shall include facts supporting the petition. The petition shall contain a notice in conspicuous print providing that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. The petition shall also set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and section three hundred eighty-four-c of this chapter, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of section three hundred eighty-four-c of this chapter. The petition shall also set forth the efforts which were made, prior to the placement of the child into foster care, to prevent or eliminate the need for removal of the child from his or her home and the efforts which were made prior to the filing of the petition to make it possible for the child to return safely home. If such efforts were not made, the petition shall set forth the reasons why these efforts were not made. The petition shall request that, pending any hearing which may be required by the family court judge, a temporary order be made transferring the care and custody of the child to the social services official in accordance with the provisions of subdivision three of this section. In the case of a child whose care and custody have been transferred to a social services official by means of an instrument executed pursuant to section three hundred eighty-four-a of this chapter, the petition shall also allege and there shall be shown by affidavit or other proof satisfactory to the court that all the requirements of such section have been satisfied, including the results of the investigation to locate relatives of the child, including any non-respondent parent and all of the child's grandparents. Such results shall include whether any relative who has been located expressed an interest in becoming a foster parent for the child or in seeking custody or care of the child.

(b) The social services official who initiated the proceeding shall file supplemental information with the clerk of the court not later than ten days prior to the date on which the proceeding is first heard by the court. Such information shall include relevant portions, as determined by the department, of the assessment of the child and his family circumstances performed and maintained, and the family's service plan if available, pursuant to sections four hundred nine-e and four hundred nine-f of this chapter. Copies of such supplemental information need not be served upon those persons entitled to notice of the proceeding and a copy of the petition pursuant to subdivision four of this section.

(2-a) Continuing jurisdiction. (a) The court shall possess continuing jurisdiction over the parties until the child is discharged from placement and all orders regarding supervision, protection or services have expired.

(b) The court, upon approving an instrument under this section, shall schedule a permanency hearing pursuant to article ten-A of the family court act for a date certain not more than eight months after the placement of the child into foster care. Such date certain shall be included in the order approving the instrument.

(3) Disposition of petition. (a) If the court is satisfied that the parent, parents or guardian executed such instrument knowingly and voluntarily and because he or she

would be unable to make adequate provision for the care, maintenance and supervision of such child in his or her home, and that the requirements of section three hundred eighty-four-a of this chapter, if applicable, have been satisfied and that where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home and that prior to the initiation of the court proceeding required to be held by subdivision one of this section, reasonable efforts were made to make it possible for the child to return safely to his or her home, the court may find and determine that the best interests and welfare of the child would be promoted by removal of the child from such home, and that it would be contrary to the welfare of such child for the child to continue in such home, and the court shall thereupon grant the petition and approve such instrument and the transfer of the custody and guardianship or care and custody of such child to such social services official in accordance therewith. If the court determines that, where appropriate, reasonable efforts were made prior to the placement of the child into foster care to prevent or eliminate the need for removal of the child from his or her home, that prior to the initiation of the court proceeding reasonable efforts were made to make it possible for the child to return safely to his or her home, or that it would be contrary to the best interests of the child to continue in the home, or that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such findings. Approval of such instrument in a proceeding pursuant to this section shall not constitute a remand or commitment pursuant to this chapter and shall not preclude challenge in any other proceeding to the validity of the instrument. If the permanency plan for the child is adoption, guardianship, permanent placement with a fit and willing relative or another planned permanent living arrangement other than reunification with the parent or parents of the child, the court must consider and determine in its order whether reasonable efforts are being made to make and finalize such alternate permanent placement.

(b) For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in subdivision twelve of this section;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in section 125.25 of the penal law and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in section 125.15 of the penal law and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal

facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in section 120.12 of the penal law, and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in subparagraph two, three or four of this paragraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated; unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. Such hearing shall be conducted pursuant to section one thousand eighty-nine of the family court act. The local social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the local social services official may file a petition for termination of parental rights of the parent in accordance with section three hundred eighty-four-b of this chapter.

(c) For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(d) For the purpose of this section, a sibling shall include a half-sibling.

(e) The order granting the petition of a social services official and approving an instrument executed pursuant to section three hundred eighty-four-a of this chapter may include conditions, where appropriate and specified by the judge, requiring the implementation of a specific plan of action by the social services official to exercise diligent efforts toward the discharge of the child from care, either to his own family or to an adoptive home; provided, however, that such plan shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. An order of placement shall include, at the least:

(i) a description of the visitation plan;

(ii) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to subdivision three of section four hundred nine-e of this chapter, of their right to attend the conference, and of their right to have counsel or other representative or companion with them;

A copy of the court's order and the service plan shall be given to the respondent. The order shall also contain a notice that if the child remains in foster care for more than fifteen of the most recent twentytwo months, the agency may be required by law to file a petition to terminate parental rights.

Nothing in such order shall preclude either party to the instrument from exercising its rights under this section or under any other provision of law relating to the return of the care and custody of the child by the social services official to the parent, parents or guardian. Violation of such on [an] order shall be subject to punishment pursuant to section seven hundred fifty-three of the judiciary law.

(f) For a child who has attained the age of fourteen, if the court grants the petition and approves an instrument executed pursuant to section three hundred eighty-four or three hundred eighty-four-a of this chapter and the transfer of custody and guardianship or care and custody of the child to a local social services official the court shall determine in its order the services and assistance needed to assist the child in learning independent living skills.

(4) Notice. (a) Upon the filing of a petition pursuant to this section, the family court judge shall direct that service of a notice of the proceeding and a copy of the petition shall be made upon such persons and in such manner as the judge may direct. If the instrument executed by the parent, parents or guardian of a child consents to the jurisdiction of the family court over such proceeding, and waives service of the petition and notice of proceeding, then the family court judge may, in his discretion, dispense with service upon the consenting parent, parents or guardian, provided, however, that a waiver of service of process and notice of the proceeding by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be null and void and shall not be given effect by the court. Notice to any parent, parents or guardian who has not executed the instrument shall be required.

(b) In the event the family court judge determines that service by publication is necessary and orders service by publication, service shall be made in accordance with the provisions of rule three hundred sixteen of the civil practice law and rules, provided, however, that a single publication of the summons or other process with a notice as specified herein in only one newspaper designated in the order shall be sufficient. In no event shall the whole petition be published. The petition shall be delivered to the person summoned at the first court appearance pursuant to section one hundred fifty-four-a of the family court act. The notice to be published with the summons or other process shall state the date, time, place and purpose of the proceeding.

(i) If the petition is initiated to transfer custody and guardianship of a child by an instrument executed pursuant to the provisions of section three hundred eighty-

four of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of custody and guardianship of the child to a social services official in this proceeding.

(ii) If the petition is initiated to transfer care and custody of a child by an instrument executed pursuant to the provisions of section three hundred eighty-four-a of this chapter, the notice to be published shall also state that failure to appear may result, without further notice, in the transfer of care and custody of the child to a social services official in this proceeding.

(c) [Repealed]

(5) Hearing and waiver. The instrument may include a consent by the parent, parents or guardian to waiver of any hearing and that a determination may be made by the family court judge based solely upon the petition, and other papers and affidavits, if any, submitted to the family court judge, provided, however, that a waiver of hearing by a parent or guardian who has transferred the care and custody of a child to an authorized agency, pursuant to section three hundred eighty-four-a of this chapter, shall be effective only if such waiver was executed in an instrument separate from that transferring the child's care and custody. In any case where an effective waiver has been executed, the family court judge may dispense with a hearing, approve the instrument and the transfer of the custody and guardianship or care and custody of the child to the social services official and make the requisite findings and determinations provided for in subdivision three of this section, if it appears to the satisfaction of the family court judge that the allegations in the petition are established sufficiently to warrant the family court judge to grant such petition, to make such findings and determination, and to issue such order.

In any case where a hearing is required, the family court judge, if the holding of an immediate hearing on notice is impractical, may forthwith, upon the basis of the instrument and the allegations of the petition, make a temporary finding that the parent, parents, or guardian of the child are unable to make adequate provision for the care, maintenance and supervision of such child in the child's own home and that the best interest and welfare of the child will be promoted by the removal of such child from such home and thereupon, the family court judge shall make a temporary order transferring the care and custody of such child to the social services official, and shall set the matter down for hearing on the first feasible date.

(6) Representation. In any case where a hearing is directed by the family court judge, he or she shall, pursuant to section two hundred forty-nine of the family court act, appoint an attorney to represent the child, who shall be admitted to practice law in the state of New York.

(7) Return of child. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian upon any terms and conditions or at any time, the local social services official shall comply with such terms of such instrument without further court order. Every order approving an instrument providing for the transfer of the care and custody of a child to a local social services official shall be served upon the parent, parents or guardian who executed such instrument in such manner as the family court judge may provide in such order, together with a notice of the terms and conditions under which the care and custody of such child

may be returned to the parent, parents or guardian. If an instrument provides for the return of the care and custody of a child by the local social services official to the parent, parents or guardian without fixing a definite date for such return, or if the local social services official shall fail to return a child to the care and custody of the child's parent, parents or guardian in accordance with the terms of the instrument, the parent, parents or guardian may seek such care and custody by motion for return of such child and order to show cause in such proceeding or by writ of habeas corpus in the supreme court. Nothing in this subdivision shall limit the requirement for a permanency hearing pursuant to article ten-A of the family court act.

(8) Appealable orders. Any order of a family court denying any petition of a local social services official filed pursuant to this section, or any order of a family court granting or denying any motion filed by a parent, parents or guardian for return of a child pursuant to this section, shall be deemed an order of disposition appealable pursuant to article eleven of the family court act.

(9) Duty of social services official. In the event that a family court judge denies a petition of a social services official for approval of an instrument, upon a finding that the welfare of the child would not be promoted by foster care, such social services official shall not accept or retain the care and custody as a public charge or custody and guardianship of such child, provided, however, that the denial by a family court judge of a petition of a social services official filed pursuant to this section shall not limit or affect the duty of such social services official to take such other action or offer such services as are authorized by law to promote the welfare and best interests of the child.

(10) Visitation rights; non-custodial parents and grandparents. (a) Where a social services official incorporates in an instrument visitation rights set forth in an order, judgment or agreement as described in paragraph (d) of subdivision two of section three hundred eighty-four-a of this chapter, such official shall make inquiry of the state central register of child abuse and maltreatment to determine whether or not the person having such visitation rights is a subject or another person named in an indicated report of child abuse or maltreatment, as such terms are defined in section four hundred twelve of this chapter, and shall further ascertain, to the extent practicable, whether or not such person is a respondent in a proceeding under article ten of the family court act whereby the respondent has been alleged or adjudicated to have abused or neglected such child.

(b) Where a social services official or the attorney for the child opposes incorporation of an order, judgment or agreement conferring visitation rights as provided for in paragraph (e) of subdivision two of section three hundred eighty-four-a of this chapter, the social services official or attorney for the child shall apply for an order determining that the provisions of such order, judgment or agreement should not be incorporated into the instrument executed pursuant to such section. Such order shall be granted upon a finding, based on competent, relevant and material evidence, that the child's life or health would be endangered by incorporation and enforcement of visitation rights as described in such order, judgment or agreement. Otherwise, the court shall deny such application.

(c) Where visitation rights pursuant to an order, judgment or agreement are incorporated in an instrument, the parties may agree to an alternative schedule of visitation equivalent to and consistent with the original or modified visitation order,

judgment, or agreement where such alternative schedule reflects changed circumstances of the parties and is consistent with the best interests of the child. In the absence of such an agreement between the parties, the court may, in its discretion, upon application of any party or the child's attorney, order an alternative schedule of visitation, as described herein, where it determines that such schedule is necessary to facilitate visitation and to protect the best interests of the child.

(d) The order providing an alternative schedule of visitation shall remain in effect for the length of the placement of the child as provided for in such instrument unless such order is subsequently modified by the court for good cause shown. Whenever the court makes an order denying or modifying visitation rights pursuant to this subdivision, the instrument described in section three hundred eighty-four-a of this chapter shall be deemed amended accordingly.

(11) Siblings, placement and visitation. (a) In reviewing any petition brought under this section, the court shall inquire if the social services official has arranged for the placement of the child who is the subject of the petition with any minor siblings or half-siblings who are placed in care or, if such children have not been placed together, whether such official has arranged for regular visitation and other forms of regular communication between such child and such siblings.

(b) If the court determines that the subject child has not been placed with his or her minor siblings or half-siblings who are in care, or that regular visitation and other forms of regular communication between the subject child and his or her minor siblings or half-siblings has not been provided or arranged for, the court may direct such official to provide or arrange for such placement or regular visitation and communication where the court finds that such placement or visitation and communication is in the child's best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

(12) For the purposes of this section, aggravated circumstances means where a child has been either severely or repeatedly abused, as defined in subdivision eight of section three hundred eighty-four-b of this chapter; or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of section one thousand twelve of the family court act, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of section one thousand twelve of the family court act, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure

such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

§384. Guardianship and custody of children not in foster care

1. Method. The guardianship of the person and the custody of a child who is not in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

(a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;

(b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

(c) if such child is born out of wedlock, by the mother of such child, and by the father of such child, if such father's consent would be required for the child's adoption, pursuant to section one hundred eleven of the domestic relations law;

(d) if both parents of such child are dead, or if such child is born out of wedlock and the mother of such child is dead by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record.

2. Terms.

(a) Such guardianship shall be in accordance with the provisions of this article and the instrument shall be upon such terms and subject to such conditions as may be agreed upon by the parties thereto. The instrument shall recite that the authorized agency is thereby authorized and empowered to consent to the adoption of such child in the place and stead of the person signing the instrument, and may recite that the person signing the instrument waives any notice of such adoption; provided, however, that an authorized agency shall not accept a surrender instrument conditioned upon adoption by a particular person, unless the agency has fully investigated and certified or approved such person as a qualified adoptive parent. Any surrender instrument subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted, upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of

both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision. No such agency shall draw or receive money from public funds for the support of any such child except upon the written order or permit of the local social services official of the county or city sought to be charged with the support of such child.

(b) If a surrender instrument designates a particular person or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties.

If a surrender instrument does not designate a particular person or persons who will adopt the child, then the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney may enter into a written agreement providing for communication or contact, on such terms and conditions as may be agreed to by the parties. Such agreement also may provide terms and conditions for communication with or contact between the child and the child's biological sibling or half-sibling, if any. If any such sibling or half-sibling is fourteen years of age or older, such terms and conditions shall not be enforceable unless such sibling or half-sibling consents to the agreement in writing. If the court before which the surrender instrument is presented for approval determines that the agreement concerning communication and contact is in the child's best interests, the court shall approve the agreement. If the court does not approve the agreement, the court may nonetheless approve the surrender; provided, however, that the birth parent or parents executing the surrender instrument shall be given the opportunity at that time to withdraw such instrument. Enforcement of any agreement prior to the adoption of the child shall be in accordance with subdivision (b) of section one thousand fifty-five-a of the family court act. Subsequent to the adoption of the child, enforcement of any agreement shall be in accordance with section one hundred twelve-b of the domestic relations law.

3. The instrument herein provided shall be executed and acknowledged (a) before any judge or surrogate in this state having jurisdiction over adoption proceedings, except that if the child is being surrendered as a result of, or in connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the instrument shall be executed and acknowledged in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding; or (b) in the presence of one or more witnesses and acknowledged by such witness or witnesses, in the latter case before a notary public or other officer authorized to take proof of deeds, and shall be recorded in the office of the county clerk in the county where such instrument is executed, or where the principal office of such authorized agency is located, in a book which such county clerk shall

provide and shall keep under seal. Such record shall be subject to inspection and examination only as provided in subdivisions three and four of section three hundred seventy-two of this title. Notwithstanding any other provision of law, if the parent surrendering the child for adoption is in foster care the instrument shall be executed before a judge of the family court.

Whenever the term surrender or surrender instrument is used in any law relating to the adoption of children who are not in foster care, it shall mean and refer exclusively to the instrument hereinabove described for the commitment of the guardianship of the person and the custody of a child to an authorized agency by his parents, parent or guardian; and in no case shall it be deemed to apply to any instrument purporting to commit the guardianship of the person and the custody of a child to any person other than an authorized agency, nor shall such term or the provisions of this section be deemed to apply to any instrument transferring the care and custody of a child to an authorized agency pursuant to section three hundred eighty-four-a of this chapter.

Any person or persons having custody of a child for the purpose of adoption through an authorized agency shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit a guardianship of the person or custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person.

Any person or persons having custody for more than twelve months through an authorized agency for the purpose of foster care shall be permitted as a matter of right, as an interested party, to intervene in any proceeding commenced to set aside a surrender purporting to commit the guardianship of the person and custody of a child executed under the provisions of this section. Such intervention may be made anonymously or in the true name of said person or persons having custody of the child for the purpose of foster care.

A copy of such surrender shall be given to such surrendering parent upon the execution thereof. The surrender shall include the following statement: "I, (name of surrendering parent), this day of, , have received a copy of this surrender. (Signature of surrendering parent)". Such surrendering parent shall so acknowledge the delivery and the date of the delivery in writing on the surrender.

Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section, the instrument shall further state in plain language that:

(i) the authorized agency shall notify the parent, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, the attorney for the child and the court that approved the surrender within twenty days of any substantial failure of a material condition of the surrender prior to the finalization of the adoption of the child; and

(ii) except for good cause shown, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and the child's attorney in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, in order for the court to review such failure and, where

necessary, to hold a hearing; provided, however, that, in the absence of such filing, the parent and/or attorney for the child may file such a petition at any time up to sixty days after notification of such failure. Such petition filed by a parent or attorney for the child must be filed prior to the child's adoption; and

(iii) the parent is obligated to provide the authorized agency with a designated mailing address, as well as any subsequent changes in such address, at which the parent may receive notices regarding any substantial failure of a material condition, unless such notification is expressly waived by a statement written by the parent and appended to or included in such instrument.

Nothing in this paragraph shall limit the notice on the instrument with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of the child.

4. Upon petition by an authorized agency, a judge of the family court, or a surrogate, may approve such surrender, on such notice to such persons as the surrogate or judge may in his or her discretion prescribe. If the child is being surrendered as a result of, or in connection with, a proceeding before the family court pursuant to article ten or ten-A of the family court act, the petition shall be filed in the family court that exercised jurisdiction over such proceeding and shall be assigned, wherever practicable, to the judge who last presided over such proceeding. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to section three hundred eighty-four-c of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to such section. No person who has received such notice and been afforded an opportunity to be heard may challenge the validity of a surrender approved pursuant to this subdivision in any other proceeding. However, this subdivision shall not be deemed to require approval of a surrender by a surrogate or judge for such surrender to be valid.

5. If a duly executed and acknowledged adoption surrender shall so recite, no action or proceeding may be maintained by the surrendering parent or guardian for the custody of the surrendered child or to revoke or annul such surrender where the child has been placed in the home of adoptive parents and more than thirty days have elapsed since the execution of the surrender or where the purpose of such action or proceeding is to return the child to or vest the child's custody in any person other than the parent or guardian who originally executed such surrender. This subdivision shall not bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of a surrender.

For the purposes of this subdivision, no child shall be deemed to have been placed in the home of adoptive parents unless the fact of such placement, the date thereof, the date of the agreement pertaining thereto and the names and addresses of the adoptive parents shall have been recorded in a bound volume maintained by the agency for the purpose of recording such information in chronological order.

Where the parties have agreed that the surrender shall be subject to conditions pursuant to subdivision two of this section and where there has been a substantial failure of a material condition prior to the finalization of the adoption of the child, the agency

shall notify the parent thereof, unless such notice is expressly waived by a statement written by the parent and appended to or included in such instrument, and shall notify the court and the law guardian for the child within twenty days of such failure. In any such case, the authorized agency shall file a petition on notice to the parent unless notice is expressly waived by a statement written by the parent and appended to or included in such instrument and law guardian in accordance with section one thousand fifty-five-a of the family court act within thirty days of such failure, except for good cause shown, in order for the court to review such failure and, where necessary, to hold a hearing; provided, however, that, in the absence of such a filing, the parent and/or law guardian for the child may file such a petition at any time up to sixty days after notification of the failure. Such a petition filed by a parent or law guardian must be filed prior to the adoption. Nothing in this paragraph shall limit the rights and remedies available to the parties and the law guardian pursuant to section one hundred twelve-b of the domestic relations law with respect to a failure to comply with a material condition of a surrender subsequent to the finalization of the adoption of a child.

6. In an action or proceeding to determine the custody of a child not in foster care surrendered for adoption and placed in an adoptive home or to revoke or annul a surrender instrument in the case of such child placed in an adoptive home, the parent or parents who surrendered such child shall have no right to the custody of such child superior to that of the adoptive parents, notwithstanding that the parent or parents who surrendered the child are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Upon acceptance of a judicial surrender or approval of an extra-judicial surrender pursuant to this section, the court shall schedule an initial freed child permanency hearing pursuant to section one thousand eighty-nine of the family court act.

8. Upon execution of a surrender instrument, the parent executing the surrender shall provide information to the extent known regarding the other parent, any person to whom the surrendering parent had been married at the time of the conception or birth of the child and any other person who would be entitled to notice of a proceeding to terminate parental rights pursuant to section three hundred eighty-four-c of this title. Such information shall include, but not be limited to, such parent's or person's name, last-known address, social security number, employer's address and any other identifying information. Any information provided pursuant to this subdivision shall be recorded in the uniform case record maintained pursuant to section four hundred nine-f of this article; provided, however, that the failure to provide such information shall not invalidate the surrender.