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# Emergency Planning Guide for Parents with Uncertain Immigration Status

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

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

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

## 1) Caregiver Authorization

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

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

**Caregiver Authorization Affidavit Form**:
https://www.mass.gov/doc/caregiver-authorization-affidavit/download

*Legal reference: Massachusetts General Laws Chapter 201F*

## 2) Temporary Agent Authorization

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

- **What is the Process for Authorizing a Temporary Agent?**
  The process is nearly identical to caregiver authorization, but a parent would also need the consent of the second parent, if that parent may be willing and able to provide care and his/her whereabouts are known.

**Sample Temporary Agent Authorization Form**:
https://www.masslegalhelp.org/sites/default/files/2024-02/temporary-agent-appointment-w-alternate.pdf

*Legal reference: Massachusetts General Laws Chapter 190B Article V Section 5-103*

## 3) Guardianship of a Minor

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

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

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

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

  ***Court-appointed Attorney:***

Under Massachusetts law, a parent has the right to a lawyer during a guardianship case. If you cannot afford one because your income is very low, you may have the right to a lawyer appointed by the court. To request a lawyer in the guardianship proceedings, you may file a Motion to Request for Counsel. The Court can appoint an attorney to represent the parent, even if the parent is detained or deported.

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

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

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

- **What do I need to keep in mind?**
  There is no guarantee that the guardian chosen by the parent will be appointed by the court. There is also no guarantee that a guardianship will be amended or terminated when the parent wishes (and it may be difficult to amend or terminate a guardianship if the parent is in another country). But if the parent, the intended guardian, and the child all agree, courts will generally respect their wishes unless there is evidence that doing so would not be in the best interests of the child.

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

*Legal reference: Massachusetts General Laws Chapter 190B Article V Section 5-204, 5-206 and 5-207*

**Resources**

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

- **General Information**
  More information on guardianship: https://www.mass.gov/guardianship-of-minors

  Mass Legal Help's Guide to Planning for a Family Emergency: http://www.masslegalhelp.org/immigration/family-emergency

  Information about access to a court-appointed lawyer as a parent in a guardianship case: http://www.masslegalhelp.org/children-and-families/guardianship/parents-right-to-lawyer

  Court guides for relative caregivers with a list of helpful resources depending on location of residence in Massachusetts: https://www.massgrg.com/massgrg_2019/assets/files/relative_caregivers_guide_2014.pdf

  2014 toolkit titled *Detained or Deported: What about my children?* by the Women's Refugee Commission: https://www.womensrefugeecommission.org/rights/resources/1022-detained-or-deported-parental-toolkit-english-interactive

- **Legal Assistance**

List of legal assistance options, including Lawyer for the Day Programs in Probate and Family Court: https://www.mass.gov/info-details/finding-a-lawyer

Massachusetts Bar Association Lawyer Referral Service: https://www.massbar.org/public/lawyer-referral-service

Massachusetts Legal Resource Finder: https://masslrf.org/en/home

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

Caregiver Authorization
Temporary Agent Authorization
Guardianship Documents, including:
- Notarized Waiver and Consent to Petition for Guardianship
- Notarized and Verified Consent or Nomination by Minor (if child is 14 or older)

Passport
Birth Certificate
Social Security Card or Individual Taxpayer Identification Number
Immigration documents
Paperwork related to custody of the child
Financial account information
Records of real or personal property
Records related to state or federal benefits programs (including Social Security, TAFDC, EAEDC, SNAP, and EEC)
Insurance policies (including health insurance and life insurance)
Medical records
School records
Important contact information (including school, doctor, and family members)

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