

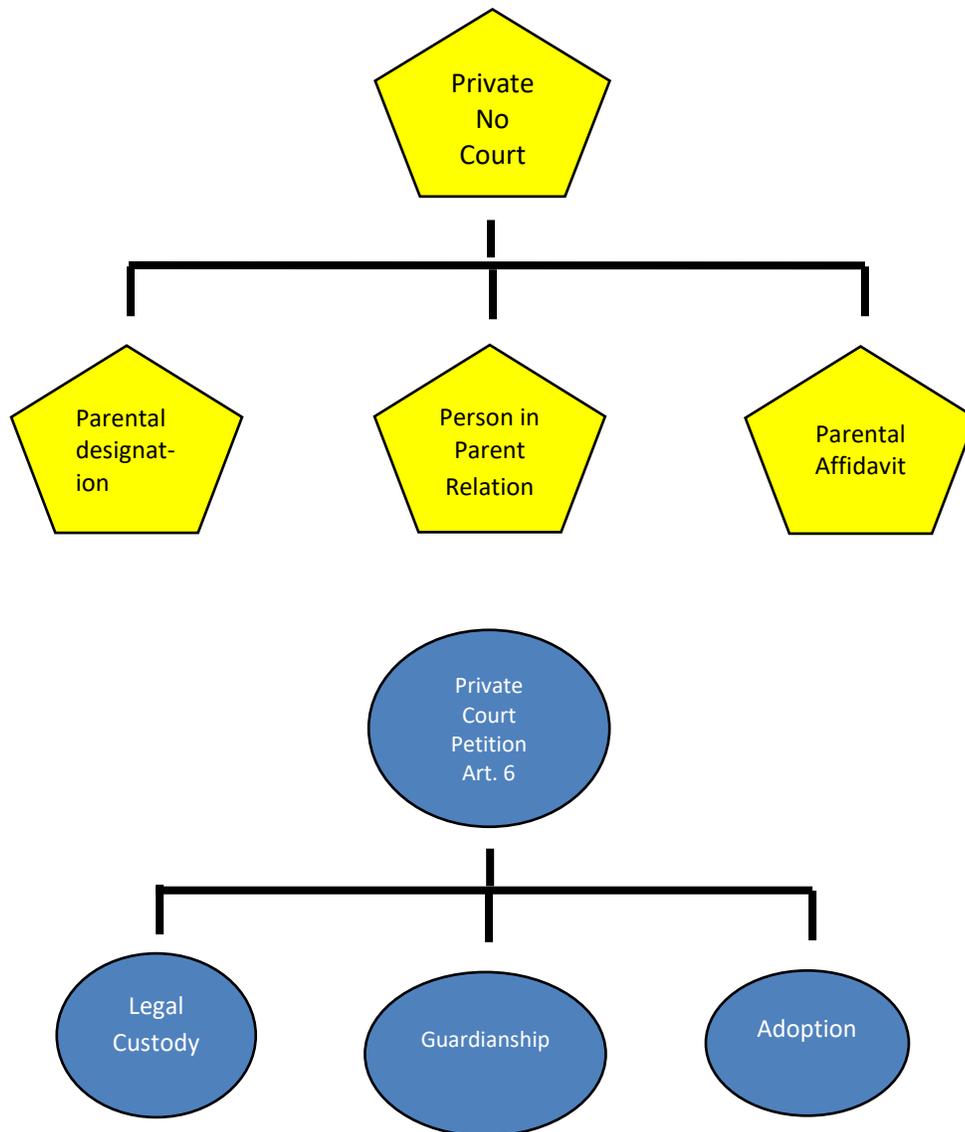
# Kinship Care: Custodial Arrangements

## How Kin Care for Children

**KEY:** Yellow Pentagons and Blue ovals are private actions (no child welfare);  
Purple Rectangles are public child welfare actions

### Private - No Child Welfare Engagement

There are an estimated 189,000 children in private custodial arrangements



## Private Arrangements - No Child Welfare Engagement

### Private – No Court:

**Parental designation:**<sup>1</sup> refers to statutes that permit a parent to “designate” some of their authority.

**Person in parental relationship:**<sup>2</sup> refers to the term used in public health and education statutes that grants limited authority to certain caregivers.

**Parental affidavit:**<sup>3</sup> refers to educational case law that permits affidavits as proof of a non-parent assuming care and control for purposes of school enrollment.

### Private – Court Petition:

**Private custodial proceedings:** usually Article Six of the Family Court Act. Most kinship families will become legal custodians. Legal guardianship can also be petitioned in the Surrogate’s Court. Custody and guardianships have different procedural requirements. Regarding authority, guardianship powers are clearly defined in numerous statutes. Legal custody in only a few.

**Legal Custody:**<sup>4</sup> most kinship caregivers become legal custodians in family court. Has numerous types (sole, joint, temporary, permanent). Legal custody does not include the authority to make medical decisions for a child.

**Guardianship:**<sup>5</sup> has numerous types (guardianship of the person, temporary, permanent, KinGAP, etc.), but all provide the same authority, which includes medical.

**Adoption:**<sup>6</sup> In some instances, a kinship caregiver may petition to adopt. Most often, adoptions occur after a foster care placement.

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<sup>1</sup> GOL §§1551-1555, PHL § 2504.

<sup>2</sup> PHL § 2164, EdI § 3212.

<sup>3</sup> 8 NYCRR 100.2(y)

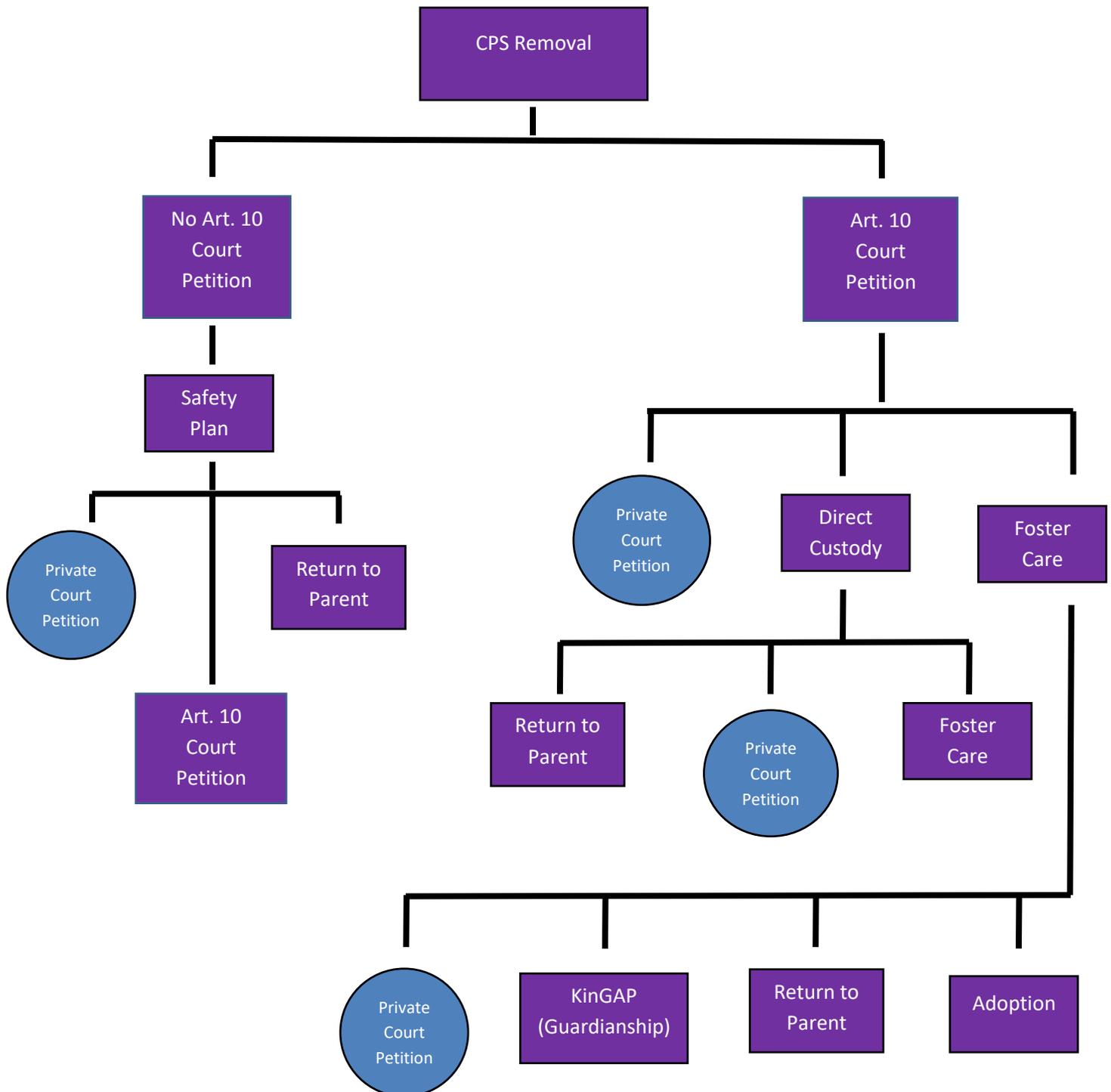
<sup>4</sup> FCA §§ 651 – 657; DRL § 74.

<sup>5</sup> S.C.P.A. §§ 1700 ff.; DRL § 74.

<sup>6</sup> DRI §§ 115-116.

## Public Arrangements - Child Welfare Engagement

Approximately 3,700 children are currently in Kinship Foster Care, 2,000 children are placed each year in Direct Custody, 400 exit foster care to KinGAP per year



## Public Arrangements - Child Welfare Engagement

**Left side of the diagram:** when a child welfare worker indicates to a family that the child is unsafe with their parents, but instead of initiating a removal in court, initiates a safety plan. As seen in the first diagram of private custodial arrangements, on occasion, children are left with kinship caregivers in a safety plan and no follow up is done by child welfare. The normal outcomes of a safety plan include a private custody petition, return to parent, or a subsequent CPS Article Ten removal proceeding.

**Safety Plan:**<sup>7</sup> refers to a placement facilitated by child welfare, where there is no court proceeding. Occasionally, children are left with relatives in a safety plan and child welfare stops being involved.

**Right side of the diagram:** Removal starts an Article Ten court proceeding that leads to:

**Private Court Petition:**<sup>8</sup> a potential kinship caregiver steps in to petition the court for custody of a child, asking the child welfare department to relinquish custody in a private Article Six court proceeding.

**Direct Custody:**<sup>9</sup> a child welfare department may place a child temporarily in the custody of a kinship caregiver, with continued involvement of the child welfare system and a permanency goal of return to parent. Direct custody may lead to a private court petition from a caregiver. It is also possible, though somewhat rare, that a caregiver may move from being in a direct custody arrangement to becoming a fully approved foster parent for their child.

**Foster Care:**<sup>10</sup> child welfare removes a child and may use an “emergency foster care certification” for a kinship caregiver in order to place a child immediately with a kinship caregiver while the caregiver gets certified or approved as a foster parent. Once a child is with a kinship caregiver who is their foster parent, the typical outcomes include return to parent, adoption, or KinGAP. Very rarely a caregiver may choose to exit foster care via a private court petition, but will lose all subsidies and supports they would be eligible in other permanency options.

**Adoption:**<sup>11</sup> proceedings would necessitate a termination of the child’s parent’s rights before moving toward permanency in this way. In many circumstances, adoption from foster care comes with an adoption subsidy.

**KinGAP:**<sup>12</sup> outcome only available to kinship foster parents, and provides a subsidy for a caregiver who, with the help of the child welfare department, petitions the court for guardianship in order to exit foster care. There is no termination of parental rights.

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<sup>7</sup>18 NYCRR 430.10(b)(2).

<sup>8</sup> FCA §§ 1055-b, 1089-a (conversions to Article Six private court petitions).

<sup>9</sup> FCA Art. 10, FCA § 1017.

<sup>10</sup> SSL §§ 383-c et al.

<sup>11</sup> DRL §§ 112-114; FCA §§ 611-634.

<sup>12</sup> SSL §§ 458-a ff.