

Created by
The Neighborhood Center Inc
Utica NY



Kin and Kids Outreach & Support
Caregivers Rights
&
Responsibilities



KIN AND KIDS OUTREACH & SUPPORT
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**The information in this booklet is not legal advice
nor should it be substituted for legal advice.**

The information found in the is booklet can also be found on various website resources such as; NYS Kinship Navigator, The NYS Citizen Coalition for Children, The Children’s Defense Fund, Lift, Grandparents for Children’s Rights, Kinship Care Legal Research Center, and The American Bar Association: Center on Children and The Law. The information collected in this booklet was current upon the time of printing. However, we are not responsible for information that may be subject to change.

KINSHIP CARE

Kinship care is classified in two ways: informal or formal.

Informal Kinship Care

Informal Kinship is when family members decide that it would be in the child's best interest, due to issues of safety and stability, to provide out-of-home placement without outside agency involvement. An informal kinship arrangement might occur due to any of the following circumstances.

- Death of a parent or legal guardian of the child
- Serious illness of a parent or legal guardian of the child
- Addiction of a parent or legal guardian of the child
- Incarceration of a parent or legal guardian of the child
- Abandonment by a parent or legal guardian of the child
- Active military duty of a parent or legal guardian of the child
- Safety and well being concerns / Protective issues

Informal caregivers do not have any legal rights with respect to the children in their care. Regardless of why a child is living with relatives, the child's parents are still the legal guardians. The informal arrangement can be ended by the legal parent/guardian at any time. Additionally, in an informal relationship, a child welfare agency does not have legal custody, so the caregiver's home does not need to be licensed.

Formal Kinship Care

Formal kinship care is when children are removed from the care of their parents/guardians due to issues of safety or stability. In this case, a process is in place that involves the child being under the legal protection of a child welfare agency. When a child in foster care, is being cared for on a full time basis by a relative it is called "Formal Kinship Care." When the arrangement is a formal kinship the Commissioner of Social Services has legal custody of the child while the family member provides the care. The kinship caregivers home has to meet safety requirements and other conditions. A caseworker from the agency is assigned to work with the caregiver and together all parties work towards a permanency plan.

For additional information visit The National Resource Center for Permanency and Family Connections website.

www.nrcfcppp.org

MAKING THE DECISION TO BE A PRIMARY CAREGIVER

It is not only the children who benefit from staying within their family. Family ties run deep, and relatives often feel more comfortable knowing that the children in their family are being nurtured and cared for by people they know. However the decision to care for a relative's child should not be made lightly. It is a life changing decision for the entire family. It is a decision that will bring dramatic changes to the lifestyle of the child and the caregiver, especially if the potential caregiver is the grandparent who has reached the stage of life to enjoy a more relaxed family and social life. Before making a decision, a potential caregiver should explore the following issues:

- Are you willing to make significant changes in your life such as; changes in lifestyle, job, social activities, housing, and the possibility of working with the local Department of Social Services or other community agencies?
- How do other family members feel about the decision, are they supportive?
- How will you relate to the child's birth parents? How do they feel about the child? Can you accept the child as a unique individual? Do you have pre-determined expectations of this child?
- How prepared are you to deal with problems that the child may due to the situation and life experiences?
- Have you explore the financial aspects of caring for the child?
- Does your physical and /or emotional health allow you to make the commitment to care for the child?
- Are you prepared of the possibility that you may have to explain the birthparents situation to the child in a way that will not damage their perceptions of them?
- Are you able and willing to work towards reunification in the hope that the child may be reunited with the birthparents?

If you are contemplating on becoming a primary caregiver to a child you should consider what type of arrangement to pursue such as direct placement, legal custody, guardianship, foster kinship, and informal care. Information regarding the options can be found on the following pages. Learn all you can about the various options available and how each option will affect you, your family, and the child. The information in this booklet is not legal advise. If legal advise is needed you should consult an attorney. By consulting with an attorney you will gain a better understanding of your options and the implications of each option.

OPTIONS FOR RELATIVES

Direct Placement (N-docket custody)

In this option, the child is removed from the home (protective removal) and placed with the relative by the Family Court as a part of an abuse or neglect case (Article 10 of the Family Court Act). This is often referred to as a “direct placement.” The relative is given temporary custody of the child. The temporary custody lasts only as long as there is an Article 10 case before the Family Court. The agency that removed the child must provide written permanency hearing reports to the Family Court eight months after removal and every six months thereafter. The relative caregiver will receive a copy of each report and will be invited to each of the permanency hearings. If the parent decides to surrender his or her parental rights, or the Family Court terminates the parental rights, the relative may file a petition to adopt the child but will not be eligible for an adoption subsidy. Alternatively, the relative may file a petition in court to become the child’s permanent guardian, but no subsidy is available for this option either.

Legal Custody or Guardianship

In this option, the relative must file a petition in court asking for custody or guardianship of the child (Article 6 of the Family Court Act). If the relative can prove that extraordinary circumstances exist to place the child outside of the parent’s custody, or if the parent consents, the relative will be awarded custody or guardianship of the child. With this option there is no ongoing court involvement after the court issues an order of custody or guardianship and the child is *not* in foster care, so the relative is not eligible for relative (kinship) foster care payments. If the child later becomes free for adoption, the relative will not be eligible for adoption subsidy payments. The child’s parent still has parental rights and may seek visitation with the child or may later file a petition to regain custody of the child.

Legal Custody or Guardianship

In this option, the relative must file a petition in court asking for custody or guardianship of the child (Article 6 of the Family Court Act). If the relative can prove that extraordinary circumstances exist to place the child outside of the parent's custody, or if the parent consents, the relative will be awarded custody or guardianship of the child. With this option there is no ongoing court involvement after the court issues an order of custody or guardianship and the child is *not* in foster care, so the relative is not eligible for relative (kinship) foster care payments. If the child later becomes free for adoption, the relative will not be eligible for adoption subsidy payments. The child's parent still has parental rights and may seek visitation with the child or may later file a petition to regain custody of the child.

Guardianship—How It Differs from Custody

Guardianship is similar to legal custody, but there are some differences. In general, legal custody proceedings are appropriate for disputes between spouses, and guardianship proceedings are more appropriate for providing parental authority to a non-parent. Guardians have full authority to apply for government records and documents related to the child. Guardians can sign a voluntary placement agreement if they need or wish to place a child in foster care. Only guardianship proceedings must include a criminal record and state child abuse registry search. Non-parent legal custodians have no statutory right to consent to medical treatment for children, but medical providers will usually act on the consent of legal custodians. Private health insurance policies may cover lawful custody, legal custody, and guardianship. However, policies are not obligated to provide coverage, so a particular policy may cover only legal guardianship or only legal custody.

Informal care

This option a relative or friend may agree to take care of a child at the parent's request. There is no court order, and DSS will not be involved. Usually this is a short-term arrangement. In other cases, CPS investigates a report of abuse or maltreatment in the home. DSS asks a relative if the child can live with the relative for a short time rather than go into foster care. DSS will help arrange the placement in the relative's home. Without a court order, the child will not be in your legal custody.

You will not have the authority to make medical or educational decisions for the child. The parents will still have custody and parental rights. They can demand return of the child at any time. To have the authority to make decisions about the child is when the parent designates you in writing as a *person in parental relationship* to his or her children.

Relative (Kinship) Foster Care

In this option, the agency has care and custody of the child, and the relative receives foster care payments. To become a kinship foster parent, the relative must be approved as a foster parent by the agency. This is the *only* option where the relative receives foster care payments. The kinship foster parent is expected to cooperate with the agency, allow the caseworker to visit the child and the home, agree to the child's visitation plan (even if it limits contact between the child and his/her parent), and meet regularly with the child's caseworker. Any visits between the child and the parent must be approved by the agency and must comply with any orders of the Family Court. If the parent decides to surrender his or her parental rights, or the Family Court terminates the parental rights, the kinship foster parent may file a petition in court to adopt the child. An adoption subsidy may be available if the child is eligible. Another option is to file a petition in court to become the child's permanent guardian, but no subsidy is available for this option.

Adoption

You may want to adopt the child, but you can do this only if the child is freed for adoption. A child is freed for adoption if the parents have surrendered their parental rights, or the parents' parental rights are terminated based on grounds of abandonment, permanent neglect, mental illness or mental retardation, severe or repeated abuse, or death. This is known as "termination of parental rights" (TPR). Whether or not you were the child's foster parent, you will have to meet certain requirements to adopt the child. These include, a home study, check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) in New York State (and any other state you or other adult household members have lived in during the previous five years).

For additional information visit the following website.

<http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf>

Kinship Guardianship Assistance (KinGAP)
A Permanency Option for New York State

In 2010, Legislation passed this Bill which goes into effect April 1, 2011. Foster care children, especially older youth who cannot return home and have not been able to find an adoptive family, will have an additional opportunity to find a permanent home. Kinship guardianship assistance provides a legal transfer of rights of care, custody and supervision to family members caring for their grandchildren, nieces, nephews, etc. without terminating parental rights. Importantly, it confers on guardians the authority – which they do not have as foster parents - to make education and medical decisions on behalf of the child in care. In addition, kinship guardianship assistance continues a portion, or all, of the financial support the guardian received in foster care to help defray expenses incurred in caring for a child. This financial assistance is especially important to those relatives who are retired, living on fixed incomes or caring for their own children. Most importantly, the child gains a sense of belonging to a family that he/she might not have had for a long time without fear of being uprooted once again.

Eligibility Under the Legislation

To approve a child for the program, the local department of social services must find that:

1. the child has been in foster care in the home of the prospective relative guardian for at least six consecutive months;
2. return home and adoption are not appropriate goals for the child;
3. the child demonstrates a strong attachment to the prospective relative guardian;
4. the prospective relative guardian demonstrates a strong commitment to caring for the child on a permanent basis;
5. the child has been consulted if the child is 14 years or older; and
6. appointment of the relative as a guardian is in the child's best interests.

Relatives must apply to enter into a guardianship placement and complete required background checks before reaching an agreement with the local department of social services. Relatives must be related by blood, adoption or marriage to any degree of affinity.

About the Bill

The requirements in this proposed bill align with the criteria for federal funding outlined in the Fostering Connections to Success and Increasing Adoptions Act passed in 2008. The legislation provides:

- ◆ Relatives with financial assistance to cover expenses associated with caring for a child in their homes at the same payment level as the local department of social services provides for adoption subsidies. Payments are subject to changes in room and board rates and clothing allowances. Payments can be adjusted depending on the relative guardian's circumstances and the child's special needs.
- ◆ Payments to relatives until the child is 18, or until age 21 if the child entered a kinship guardianship assistance placement after age 16 under certain conditions.
- ◆ Reimbursement to relatives for up to \$2,000 in legal expenses.
- ◆ Automatic eligibility for medical coverage to children who are qualified for federal funding. Provisions are made for health insurance coverage for children who do not qualify.
- ◆ Independent living expenses and educational and training vouchers for youth who leave foster care for kinship guardianship after age 16.
- ◆ Access to a fair hearing process if a family's application is denied, if payments are discontinued, or if there is disagreement over the amount of the payments.
- ◆ Local departments of social services the authority to make case assessments; make decisions related to reunification, adoption and kinship guardianship; and set the dollar amount for payments.

- ◆ Local departments of social services reimbursement for those children and youth who are Title IV-E eligible.
- ◆ Courts with the authority to review guardianship petitions and to hold hearings in situations where all parties do not consent to the guardianship. Determinations must be made in the best interests of the child.

Treatment of KinGAP Income for Other Programs If a relative guardian in receipt of kinship guardianship assistance payments applies for other social services district programs, the kinship guardianship assistance payments are treated in the following manner:

Temporary Assistance – Whether a child on whose behalf kinship guardianship assistance payments are received is included in the Temporary Assistance (TA) case depends on if a family benefits financially by including or excluding such child. When such child is included in the TA case, the full kinship guardianship assistance payment must be budgeted as unearned income.

Food Stamps – Kinship guardianship assistance payments should be treated the same as foster care payments for Food Stamp purposes. This gives families the choice of including the child as a member of the household, and counting the kinship guardianship assistance payment as unearned income, or excluding the child and the kinship guardianship assistance payment. The decision to include or exclude a child from a household's Food Stamp case should depend on if the household would benefit financially by including or excluding the child.

HEAP – a child on whose behalf kinship guardianship assistance payments are received is included in the household count, but guardianship payments are excluded income in the HEAP eligibility determination.

This is New York's newest opportunity to provide an alternative path to permanency for youth. This option is rooted in the best interest of the children, respects family relationships, saves the state and local districts money, and reduces child welfare workloads.

www.ocfs.state.ny.us/kinship

FAMILY, SUPREME & SURROGATE COURT

New York State Surrogate Court

In New York State, the Surrogate's Court handles all probate and estate proceedings. The Surrogate's Court is established in every county and hears cases involving the affairs of decedents, including the probate of wills and the administration of estates, guardianships, and adoptions. If a relative dies, the Surrogate's Court is where the business of winding up his or her estate would be handled. Surrogates are elected to 10-year terms in each county outside New York City and to 14-year terms in each county in New York City.

Family Court

Family Court is a court created by the state legislature by statute, specifically the Family Court Act. The Family Court's authority to hear cases may therefore be changed by the legislation amending the Family Court Act. Under the Act, the authority of the Family Court is broken down into several Articles, each article being dedicated to one type of case.

Supreme Court

Supreme Court is New York's trial level court of general jurisdiction, and its basis for existence is the New York Constitution. Despite the name of "Supreme Court," this court is New York's lowest level trial court of general jurisdiction. Cases in Supreme Court may appeal to the appropriate Appellate Divisions. Cases from the Appellate Division may be appealed to the Court of Appeals located in Albany, which is the highest court in New York. Supreme Court has the authority to hear virtually any kind of case. In addition, Supreme Court is a court of equity, which means the court is authorized to grant relief that is authorized by statute or to structure unique relief that is based on the facts of the case.

Family Court VS. Supreme Court

"The Difference of Jurisdiction"

Many cases could involve both Family Court and Supreme Court. The role of these two courts can share jurisdiction over several domestic issues. However, there are significant differences between the two courts.

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Family Court VS. Supreme Court

“The Difference of Procedure”

Family Court

Family Court is designed to be much more user friendly than Supreme Court, and is designed to allow people to represent themselves. There are standardized forms for all pleadings. A person wishing to commence a proceeding in Family Court fills out a form, from which the clerk of the court prepares the necessary papers. A judge is automatically assigned to a case in Family Court, and no additional paperwork needs to be filed to place a case on the trial calendar. A case in Family court is called a proceeding. The parties to the action are the petitioner and the respondent. A trial in Family Court is called a hearing. Many proceedings have two hearings, a fact finding hearing, and a dispositional hearing. Different rules of evidence apply to the hearings. A family court judge has the authority to assign an attorney to indigent people for many (but not all) family court proceedings. The Family Court also has the authority in some instances to award counsel fees. Appeals from Family Court judges are heard in the Appellate Division. Appeals from Support Magistrates must be made to a Family Court judge by filing objections. From there an appeal may be taken in the Appellate Division.

Supreme Court

Procedure in Supreme Court is governed by the Civil Practice Law and Rules. In Supreme Court, it is entirely possible for a case to remain in limbo and even dismissed due to procedural errors. When a case is trial ready, a separate form called a “Note of Issue” is required to place the case on the trial calendar. In short, the procedural rules alone make a lawyer almost mandatory for any case in Supreme Court. In order to have a judge assigned to a case, a form called a “Request for Judicial Intervention” needs to be filed. In regards to evidence, normal rules of evidence apply. A case in Supreme Court is called an action. The parties to the action are the plaintiff and the defendant. The plaintiff’s pleading consists of a complaint. Most complaints need not be verified. In Supreme Court, some matrimonial and support cases the court can make the spouse with more money or assets pay the counsel fees for the other spouse. Appeals from the Supreme Court are heard in the Appellate Division.

For additional information visit the following websites.

<http://www.nycourts.gov/courthelp/cfacts3.html>

<http://www.jdbar.com/Articles/supreme-family.html>

HERKIMER COUNTY COURTS

Herkimer County Supreme Court (Multi-Bench)

301 N. Washington Street Suite 509

Herkimer, NY 13350

Civil Ph: (315) 867-1209

Criminal Ph: (315) 867-1282

Fax: (315) 866-1802

Herkimer County Court (Multi-Bench)

301 N. Washington Street

Herkimer, NY 13350

Civil: (315) 867-1209

Criminal: (315) 867-1282

Fax: (315) 866-1802

Herkimer County Family Court

301 North Washington Street, 4th Fl.

P.O. Box 749

Herkimer, NY 13350

Ph: (315) 867-1139

Fax: (315) 867-1369

Herkimer County Surrogate's Court (Multi-Bench)

301 N. Washington Street

Herkimer, NY 13350

Ph: (315) 867-1170

Fax: (315) 866-1802

ONEIDA COUNTY COURTS

Appellate Division - First Department

Oneida County Office Building - 8th Floor

800 Park Avenue

(315) 266-4200

Utica, NY 13501

Oneida County Supreme Court - Utica

200 Elizabeth Street

Utica, NY 13501

Phone: (315) 266-4200

Fax: (315) 798-6436

Oneida County Supreme Court - Utica

207 Genesee Street Utica, NY 13501

(315) 266-4200

Oneida County Supreme Court - Rome

302 North James Street
Rome, NY 13440
(315) 266-4300

Oneida County Court - Utica

200 Elizabeth Street
Utica, NY 13501
Phone: (315) 266-4211
Fax: (315) 793-6047

Oneida County Family Court - Utica

200 Elizabeth Street 1st Floor
Utica, NY 13501
Phone: (315) 266-4444
Fax: (315) 798-6404

Oneida County Family Court - Rome

301 West Dominick Street
Rome, NY 13440
Phone: (315) 266-4500
Fax: (315) 336-3828

Oneida County Surrogate's Court

800 Park Avenue, 8th Fl.
Utica, NY 13501
Phone: (315) 266-4550
Rome Office: (315) 266-4309
Fax: (315) 797-9237

Utica City Court

411 Oriskany Street West
Utica, NY 13502
(315) 266-4600
Civil Department: Phone: (315) 266-4603
Criminal Department: Phone: (315) 266-4602

Rome City Court

100 West Court Street
Rome, NY 13440
Phone: (315) 337-6440
Fax: (315) 338-0343

FAMILY COURT ARTICLES

Article 3: Juvenile Delinquency

Authorizes Family Court to hear Juvenile Delinquency Cases. These are cases in which an authorized agency brings a proceeding in Family Court against a child under the age of 18, alleging that he or she committed acts that if committed by an adult, would constitute criminal conduct under the Penal Code. Juvenile Delinquency cases are broken down into two parts, a fact finding hearing during which the court determines whether the presenting agency has proven their case. If they don't the case is dismissed. Prior to fact finding, pre-trial discovery and motions are authorized. If the allegations are proven at fact finding, the matter continues with a dispositional hearing under which the court determines what the appropriate resolution is. The child may be placed on probation, released to his or her parents, placed in a group home, or placed in a secure facility. Unlike criminal cases, the disposition is not designed to punish and hence there is no set time a child may be placed away from home. Instead, the court will review any placement periodically and determine if placement should continue or end. Unlike a criminal case, there is no right to a jury trial under Article 3 proceedings.

Article 4: Child Support and Spousal Support

Article 4 of the Family Court Act governs all support matters. Section 413 provides that a parent is obligated to support their children until the age of 21. Statutory guidelines are based on a percentage of the parent's incomes. FCA Section 418 obligates a step parent to pay child support if the custodial parent is in danger of becoming a public charge. FCA Section 412 provides that a spouse may be chargeable to support a current spouse. Under the Family Court Act, for both child and spousal support, the Family Court can make initial awards, modify existing orders, and enforce existing orders. Family Court is without authority to enforce any separation agreements, any such agreement must first be reduced to a judgment. It is also possible for an existing Supreme Court order to restrict any future modifications to Supreme Court.

Article 5: Paternity

Family Court has the authority to hear paternity cases and issue orders of paternity. Child support may be awarded under an article 5 petition, retroactive to the date of filing. Prenatal support is also authorized under a paternity proceeding.

Article 6: Custody and Visitation

Family Court has the authority to make initial child custody and visitation awards. It also may modify existing orders, unless a judgment of divorce retains sole jurisdiction to the Supreme Court. Article Six further confers the Family Court jurisdiction over guardianship proceedings. Note that Surrogate's Court has concurrent jurisdiction for guardianship, and that Family Court can grant only guardianship of the person, while Surrogate's Court can grant guardianship of the person and guardianship of the property. Termination of Parental Rights is also governed by Article 6, in conjunction with Article 384-b of the Social Services Law. Article Six also confers the Family Court jurisdiction over adoptions. This authority is also shared with the Surrogate's Court.

Article 7: Person in Need of Supervision (PINS)

A PINS case is a proceeding against a child, commenced by a parent, guardian, school district or the presentment agency acting on the child's behalf of the county or city. A person in need of supervision (PINS) is an individual under the age of 18 who does not attend school, behaves in a way that is incorrigible, ungovernable, or habitually disobedient, is beyond the control of a parent guardian or lawful authority, is suspected of drug abuse, and requires supervision or treatment.

Article 8: Family Offense Proceedings (Orders of Protection)

Family Court has the authority to hear proceedings seeking an order of protection. The parties must be related in a way listed in FCA Article 8 for the court to have jurisdiction. In addition to Article 8, The Family Court Act grants the Court the authority to grant orders of protection as ancillary relief to proceedings under other Articles besides Article 8.

Article 10: Child Protective Proceedings

An authorized agency may commence a proceeding against parents to have the court rule they have neglected or abused their children. As part of the final relief and as pre-trial temporary relief, the agency may remove children and place them in foster care against the wishes of the parents.

Additional information can be found on the following websites.

<http://codes.lp.findlaw.com/nycode/FCT>

<http://www.jdbar.com/Articles/supreme-family.html>

CUSTODY, GAURDIANSHIP FOSTER CARE & ADOPTION

Legal Custody And Guardianship

Informal Custody Is Lawful Custody Most non-parent primary caretakers for children do not have court orders of legal custody or guardianship. They are **lawful custodians**, but their legal authority and control of children is incomplete. Some important laws regarding informal caregivers use the phrases "person in parental relationship" and "primary caretaker. Since September 2005, parents may designate their authority for a limited period of time to a non-parent caregiver. Parental Designation provides a useful way for parents to designate a relative or family friend as a "person in parental relationship" to a child. It has legal information but is not an official court document. The following is an example of a Parental Designation.

Parental Designation Of Children's Caregiver For One Month Or Less (Notice to Providers of Educational and Health Services) This designation is made pursuant to New York's General Obligations Law Article 5, Sections 1551-55.

I, _____, parent of the following child or children _____ (Note: insert name or names of children on lines above), designate _____ to be the caregiver and to be the person in parental relation for purposes of my child's or children's, Education, Health in accord with the laws of the State of New York, and to have full authority for one or both areas of law that I checked for a period of no more than _____ days from my authorization. (Note: The authority is valid for up to thirty days). I do not have any specific instructions for the caregiver. I do have specific instructions for the caregiver. I want the caregiver to: _____ . Parent's signature & date required.

Special Note: During the designation, the child is considered to be a resident of the school district where the parents lived when the designation was made. If you are located in a different school district and want the child you are caring for to be able to enroll tuition-free in your school district, you may want to consider another option, such as custody or guardianship. You can also discuss the matter with your school district in advance to learn how it determines a child's residency for school enrollment purposes.

Parental Designation for 1 month, 6 months and Standby Guardian forms can be obtained on the NYS Kinship Navigator, and NYS Office of Children and Family Services websites or by contacting the Kin and Kids Outreach & Support Program.

Legal Custody and Guardianship of the Person

All Family courts have jurisdiction to hear legal custody and guardianship petitions. In some counties family court will only hear legal custody petitions; in other counties family courts will also hear guardianship petitions. Domestic Relations Law § 240 and Article Six of the Family Court Act govern legal custody. The Surrogate's Court Procedures Act § 1700 ff., Domestic Relations Law § 81 and Article Six of the Family Court Act govern legal guardianship of the person for children.

Standby Guardianship

Since 2000, parents, guardians, legal custodians, and primary caretakers who cannot locate the natural parents can name a standby guardian via a petition to Family Court or to Surrogate's Court, or by a written designation that is witnessed. The authority of a standby guardian becomes effective upon the named springing event, i.e., debilitation, incapacity, or death.

Keeping Children in a Grandparent's Home

Since January 2004, Domestic Relations Law § 72 contains a new provision governing custody disputes between a grandparent and an absent parent. When children who reside in a grandparent's home for two or more years, a grandparent can petition for custody and the court must decide custody based on the best interests of children. For lesser periods of time, courts may decide based on children's best interests. This law applies to only grandparents. It does include circumstances where a grandparent maybe sharing parenting duties with a resident parent who becomes sick or dies. Courts may consider lesser periods of time for both grandparents and other relative primary caregivers to warrant a best interest trial, because an extended disruption of custody is an "extraordinary circumstance" that opens the door to a full custody trial between the non-parent and absent parent. For additional information visit the following websites.

NYS Kinship Navigator www.nysnavigator.org
New York State Unified Court System www.nycourts.gov
<http://www.ocfs.state.ny.us/main/forms/kinship/>

ADOPTION

Adoptive parents have the same responsibilities and authority over their adoptive children as did the biological parents. For children placed in foster care, the local department of social services routinely facilitates agency adoptions. For private placement adoptions, the petitioner usually will need an attorney of record, although some counties permit per se petitions. For either petition the standards are relatively the same. Both Family Court and Surrogate's Court will require notification to the natural parents and whenever possible the appearance in court of the parents. If the parents are willing to consent, then the adoption depends solely on the submission of the necessary documents, a favorable home study, a review of the adoptive parents criminal record (as well as any co-residents) and a child abuse registry check. If the parents are unwilling to consent, then their rights must first be terminated by showing by clear and convincing evidence that the parents are unfit or for other reasons incapable of parenting, *i.e.*, abandonment, mental illness, death.

Reflecting on the Pro's and Con's of Adoption

Adoption ends the legal relationship of the biological parents to the child. The adoptive parent is the parent. The legal protections afforded to parents from unwarranted state interference no longer protect the biological parents, but are afforded to the adoptive parents. Laws of intestacy include the adoptive child as an heir. Adoptive parents who intend to apply for Social Security benefits based on their lifetime earnings may add their adoptive child to their claim and receive additional payments because of the minor child's dependency upon them for support. Medicaid cannot make an estate claim if the Medicaid recipient is survived by a minor child (including adoptive children), a disabled or blind child. Adoptive parents assume full legal responsibility for their child. Because the adoptive parents are true parents, the child is no longer eligible for a "child-only" public assistance grant. The parents' income will be deemed available to the child. The biological grandparents of the adoptive child still retain the right to seek visitation, despite the cessation of their child's parental rights. In agency adoptions, the surrendering parent may place conditions on the adoption agreement. Such conditions are limited to the naming who may adopt the child(ren) or some form of continued contact with the biological parent(s). In private placement adoptions, no such conditions are legally enforceable.

Subsidized Adoption

Relative and non-relative foster parents may receive an adoption subsidy that is similar to their foster care payments. Subsidies are available for all foster adopted children who are handicapped or "hard to place."

POST ADOPTION "Grandparents may have rights"

Under certain circumstances grandparents rights survive the adoption of their grandchildren. In general, once children are adopted, the adoptive parents are the absolute parents of adoptive children. Only a few circumstances are so important that courts will consider intruding upon the new parents' rights. One of these circumstances is grandparent visitation, another is when the adoption process involved fraudulent statements that the court relied upon.

Grandparents may, under special circumstances, seek to void adoption orders where they were obtained by fraud. As a rule, courts won't reverse an order of adoption. Yet, there are certain circumstances when they will consider it. Courts will consider reversal when there is evidence of fraud, newly discovered evidence, or other sufficient causes. However, because permanency and stability are favored, it is necessary to assert this right as soon as possible.

Grandparent's rights to seek visitation post adoption

Under "proper" circumstances a natural grandparent may have right of visitation with one's grandchildren, even after the adoption of the child. Even when the adoptive family doesn't like the grandparents or the child might learn about the adoption from the grandparents, courts may consider awarding visitation, so long as there was no evidence that contact with grandparents had ever harmed or would harm the child's emotional or physical well-being. As a general rule, courts should consider the grandparent in adoptive families as in the same roles as in a traditional family, and apply the best interests of the child with favorably weight because the preservation of the grandparent and grandchild relationship is viewed as in the best interest of children. For additional information on this topic visit the NYS Kinship Navigator at; www.nysnavigator.org

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CHILD WELFARE (FOSTER CARE)

Initial Foster Care Placement of Children

Once a child is removed from a parent's home by Child Protective Services; the Department of Social Services (DSS) must search for "suitable relatives" and offer them the opportunity to become foster parents. Since January 2004, DSS must attempt to locate "all the grandparents." And any contacted relative must be told that they can ask to become a foster parent or to assume care privately and that if the family does not assume care there is a likelihood of adoption by the foster parents. Relatives who choose to become foster parents must meet standards similar to non-relative foster parents. Sometimes relatives assume the custody of a child pursuant to the neglect proceedings. Use of this custodial arrangement varies from county to county and inquiry should be made both with the county and with an attorney about this arrangement. When a child is placed with a non-relative foster family, the Adoption and Safe Families Act mandates that DSS attempt to terminate parental rights if the parent is unable to assume parental duties within fifteen of the first twenty-two months of placement.

Foster Parents Versus Relatives

If relatives choose to become the primary caregivers of a child already in foster care, DSS may choose to continue placement with the foster family. In such situations, the relative may petition for custody or guardianship or use a new procedure, Family Court Act 1028-a to seek to become a foster parent. Any petitions that a relative may initiate in Family Court prior to the termination of parental rights, the relative may prevail. When petitions for custody or guardianship are filed after termination of parental rights, petitions are frequently denied. Even adoption petitions are unlikely to prevail because Social Services Law states a preference for permanent placement with the foster family when a child is eligible for adoption.

Grandparents & Other Relatives Seeking to Become Caregivers Of Children In Foster Care

Article 10 is the Placement with Relatives Via Custody or Foster Care. When children are removed from their homes by the local Department of Social Services, Family Court Act Article Ten Section 1017 provides that the department must search for relatives, including all grandparents and inform the court about its search.

The court can then decide to place children with a relative in one of three ways:

1. *Private placement - (Article Six)* A custody petition brought by the relative. The relative will need the consent of the parents or prove that the parents either abused, abandoned, persistently neglected the child, or the child lived with the relative for an extended period of time.

2. *Private placement - (Article Ten proceedings)* In a private placement pursuant to Article Ten, the relative will have custody but the department will monitor the placement and can reunite the child with their parents.

3. *Foster care placement - (Article Ten proceeding)* In a foster care placement, the relative must qualify as a foster parent. Later, the local department may reunite the child with their parents or ask the relative to adopt. The child may reside with their relative while the relative qualifies as a foster parent.

Children Already in Foster Care

Relatives can seek to become foster parents. Family Court Act Article Ten Section 1028 - provides a procedure for relatives to become foster parents of children who were already placed in foster care. There is no right to become a foster parent but if certain circumstances exist, a court can order the local Department of Social Services to place a child with a relative while the relative qualifies as a foster parent. Under Family Court Act Section 1028-a, a petitioning relative must show:

1. The relative is related to one of the parents of the child
2. The child is in foster care with a non-relative
3. The relative wishes to become a foster parent
4. The local DSS is not willing to permit the relative to become a foster parent, despite their ability to qualify
5. No more than six months has passed since the relative received notice about the child's removal
6. No more than one year has passed since the child was removed.

If all of these circumstances are present, then the court will order a hearing to decide whether foster care placement with the child's relative is in the child's best interests. To learn more visit www.nysnavigator.org

Proving Blood Relationship To A Child

Sometimes, grandparents and other relatives, particularly on the father's side of the family, face situations where they must prove that they are related to children. Proof of blood relationship is absolutely necessary for grandparents seeking visitation and it is certainly a factor in deciding custody, guardianship and adoption. To prove blood relationship, New York has a special procedure, outlined in the Family Court Act Section 522 (FCA 522).

Grandparents And Relatives Have Statutory Right To Determination Of Grandchild's Paternity.

Where grandparent's standing to pursue visitation rights under Domestic Relations Law Section 72 (DRL 72) is challenged on the question of their blood relationship to the child. They may need to prove that their son is the father of the child. Under FCA 522, they have the right to commence and maintain a paternity suit, even despite opposition from adoptive parents. In fact, if there is real need to establish blood relations, any blood relative has this right to use FCA 522 to prove it.

Grandparents Or Relatives Have The Right To Continue Paternity Suit Even When The Father Becomes Unavailable.

This right may be exercised even when the alleged (putative) father has died, or become incapacitated, or has left the state before paternity has been determined. A paternity suit may not be stopped (abated) by the unavailability of the putative father, and may be commenced and maintained by a child's relatives including grandparents.

Children Have An Enforceable Right To Have Paternity Determined.

Children have the right to find out who is their father, even when they've been adopted. "It is now agreed that the law does not and should not look with favor upon suspending the question of parentage of a child in limbo". The reasoning is that the child has his own immutable rights that survive the adoption process as a consequence of bloodlines, even if adoptive parents object. The child has a right to establish his / her paternity for a range of reasons such as inheritance, right to recover benefits under Workers' Compensation Law, Veteran's Benefits Act, and Social Security Act, right to recover serviceman's life insurance policies and military allowance, right to notice in adoption proceedings and right to support by parents, custody or visitation and order of protection.

FINANCIAL SUPPORT

NON-PARENT (CHILD-ONLY) GRANTS

Grandparents, other relatives, and even non-relatives who are caring for children are eligible for financial assistance from their local New York State public assistance program. These grants are available to non-legally responsible adult caring for children. This means any caregiver who is not the parent of the children. Non-parent caregivers may or may not be related to the child. The "Child Only" grant is based solely on the income and resources of the child. Nonparent caregivers ARE required to comply with child support requirements and provide proof of their relationship to the child. Nonparent caregivers are NOT required to be involved in employment activities, seek work, be enrolled in the Automated Finger Imaging System, submit to drug/alcohol screening, show PROOF of their income and resources, provide their social security number, their date of birth, proof of citizenship or alien status, provide their veteran status, or have court ordered legal custody or guardianship of the child(ren). When children are living with non-parents the caregiver may apply on behalf of the child for a child only grant. Children are eligible for such grants regardless of the income of the adult nonparent caregivers. Only a "legally responsible relative's" income can be part of the eligibility calculation. By "legally responsible," the Public Assistance Source Book refers to financial responsibility. This is a distinct legal responsibility in addition to providing adequate care for children under Family Act abuse and neglect laws. While parents are legally responsible for their children, **no other caregiver has this legal responsibility unless the court orders granting legal custody or guardianships indicate that the caregiver has assumed the responsibility.** In effect, only parents, spouses, and stepparents are legally responsible to support their children; therefore other caregiver's income is not considered available to a child in deciding eligibility for public assistance.

Non-Parent Grants and Child Care When a child is the recipient of a "child only" grant, caregivers are not automatically eligible for childcare. Such caregivers, if under the 200% of the state income standard (up to 275% in some counties) may be "income eligible" under the low-income child care program. Those over the poverty level are assessed a co-payment based on the complicated schedule.

Special Requirements Based on Relationship to the Child(ren)

Most of the funding for these grants is provided by the federal Temporary Assistance to Needy Families (TANF) program. The federal government provides funds only to relatives who are nonparent caregivers. For the local district to get these federal funds, the district must collect certain information. Relative nonparent caregivers must inform the local department about their income and resources. They do not have to provide proof. Unrelated nonparent caregivers do not have to report their income and resources, because the federal government does not contribute any funds to these grants. Unrelated nonparent caregivers are paid solely by New York State funds. These grants are called Safety Net Assistance (SNA).

Budgeting options available when applying for “Child Only” Room and Board Allowance Grant AND Regular Grant & Food Stamps

are two options. If the adult applying for the child is receiving public assistance or food stamp benefits, the child will be added to the cash assistance and food stamp case. In such instances, application for room and board may offer a better result. When filling out the application for Public Assistance write on the top of the first page, “NPC/Room and Board” When applying for “NPC/Room and Board” the caregiver is considered the landlord, even if you do not own the home. If applying for NPC, in section 6 of the application you will check “TA” for each relative child in your home. If you are only applying for NPC, do not check “TA” for self or spouse, ONLY CHILDREN. The applicant (caregiver) must report their income in section 16 as well. The income needs to be reported, however it does not have to be verified at your appointment if you are applying for “NPC” only.

Contributions to Dependent Children when a non-legally responsible relative claims a child as a dependant on their income tax return (often for purposes of qualifying for a Earned Income Tax Credit), fair hearing decisions permitted social services districts to assume a 51%. As of August 2002, the 51% rule has been repealed and child only grants may no longer be reduced by deeming the income of a relative caregiver who claims the child as a dependant, to be available to the child.

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WIC

Women, Infants and Children is a special supplemental food program administered by the New York State Department of Health that provides nutritious foods, milk, juice, infant formula and cereal, and starting in January 2009, additional foods such as fruits and vegetables, whole grains and jarred baby food, to low-income pregnant, post partum or breastfeeding women, as well as infants and children up to age 5. For more information, call the Growing Up Healthy hotline at **1-800-522-5006** or visit www.health.state.ny.us/prevention/nutrition

Tax Credits

The Federal and State Earned Income Tax Credits (EITC) are refundable tax benefits for working people with low or moderate incomes. Taxpayers may qualify to receive a combined Federal and State EITC of up to \$7,354 if their income is less than \$48,279 (based on 2009 income levels). The Earned Income Credits Advance Payment allows an eligible worker to get part of his or her Federal Earned Income Tax Credit payments over the course of the year in his or her paycheck. The Federal Child Tax Credit and Additional Child Tax Credits are tax benefits offered by the federal government for taxpayers raising dependent children under the age of 17. The Empire State Child Tax Credit is a refundable credit for full-year New York State residents with children ages 4-16. The Federal Child and Dependent Care Credit is a tax benefit offered by the federal government. The New York State Child and Dependent Care Credit helps more low-income families because, unlike the federal credit, it is refundable. For more information, call the United States Internal Revenue Service at **1-800-829-1040**, or visit www.irs.gov; or call the New York State Department of Taxation and Finance at **1-800-225-5829**, visit www.tax.state.ny.us or www.myBenefits.ny.gov

Toll Free Help lines:

1. IRS National Taxpayer Advocates helpline: 1-877-777-4778
2. IRS Internal revenue service: 1-800-829-1040
3. NYS Personal Income Tax information Center: 1-800-225-5829

HEAP

The Home Energy Assistance Program assists low-income New Yorkers in paying their heating bills. HEAP also provides assistance with furnace repair and/or replacement and home weatherization. HEAP payments vary depending on household income and the type of heat used.

You may be eligible for regular HEAP benefits even if you have money in the bank or other financial resources. To apply, contact your local department of social services or your county office for the aging. For more information, call **1-800-342-3009** or visit www.otda.state.ny.us/main/heap. To see if you may qualify, visit: www.myBenefits.ny.gov

Federal Benefits For Dependant Grandchildren

State public assistance are the most commonly used source of financial assistance for kinship caregivers. But for grandparents, federal Social Security benefits are an additionally possibility and should not be overlooked. While Social Security is commonly regarded as being available for children of retired parents, the availability of such benefits to grandchildren of retired grandparents is less well known and could be of substantial benefit to grandparent caregivers.

When can a dependent grandchild or step-grandchild be considered the grandparent's "child" for Federal Social Security ?

A dependent grandchild or step-grandchild of the worker or spouse may qualify for benefits as a "child" if:

A. The grandchild's natural or adoptive parents are deceased or disabled:

At the time the worker became entitled to retirement or disability insurance benefits or died; or

At the beginning of the worker's period of disability which continued until the worker became entitled to disability or retirement insurance benefits or died; or

B. The grandchild was legally adopted by the worker's surviving spouse in an adoption decreed by a court of competent jurisdiction within the U.S. The grandchild's natural or adopting parent or stepparent must not have been living in the same household and making regular contributions to the child's support at the time the insured worker died. Besides meeting the requirement in (A) or (B), the grandchild or step-grandchild must be dependent on the insured as described in § 336.

For additional information visit the Social Security Administration www.socialsecurity.gov

SOCIAL SECURITY OLD AGE, SURVIVOR'S & DISABILITY

“Child’s Benefits” for Grandchildren

The Federal Social Security Administration will pay “Child’s Benefits” under particular conditions to dependent grandchildren of grandparents who qualify for Federal Old Age, Survivor’s or Disability Insurance (Social Security), if benefits are not payable on the work record of a parent. A grandparent or any other person generally qualifies upon application when they are over retirement age 62 and have at least 40 quarters of direct employment work history, or suffer from a disability. All references here to grandparents and grandchildren include step-grandparents and step-grandchildren. Also known as Social Security Disability Insurance (SSDI), which requires that drug or alcohol addiction was not a contributing factor in causing the disability.

Natural Grandchildren

If a dependent child is not receiving benefits from a parent when the grandparent retires, becomes disabled, or dies, the grandchild may then be able to qualify for benefits if certain conditions are met. To meet the basic conditions, the grandchild must be unmarried and be either, a) under 18 b) disabled since before age 22, or c) a full-time student. To be eligible as a grandchild, the natural or adoptive parents **must have been either deceased or under a disability** at the time the grandparent became entitled to old-age or disability benefits or died; or if the grandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. To be considered dependent on the grandparent, the grandchild must have begun living in the territorial United States with the grandparent before age 18 and received at least one half of his or her support from the grandparent for the year before the month the grandparent became entitled to retirement or disability insurance benefits, or died. Another way would be if the qualifying grandparent had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. Also, the natural parent(s) of the child must not be making regular contributions to his or her support; “substantially all” of the support must come from the grandparent.

Adopted Grandchildren

If the biological parents of the child is not deceased or disabled, the grandchild must be legally adopted by the grandparent.

Or in the process of being adopted. If the grandparents are already receiving old age or retirement benefits, they also would need to adopt the child for he or she to qualify for benefits. To be considered dependent the child must not have attained age 18 when adoption proceedings were started, or if the child reached 18 before adoption proceedings were started they would have had to be living with or receiving at least one-half of their support from the insured for the year immediately preceding the month in which the adoption order was issued.

Great Grandchildren

Generally, Social Security rules draw the generational line at grandparents. Social Security Amendments of 1972 which added paragraph (3) to section 216(e) of the Act extending meaning of word "child," for social security purposes, to include grandchild or step grandchild of grandparent or step grandparent, was not intended to include great-grandchild or stepgreat-grandchild claiming benefits on earnings record of great-grandparent or step great-grandparent. For purposes of entitlement to child's insurance benefits under section 216(e)(3) of the Act, the term "child" does not include great-grand child or step great-grandchild claiming benefits on the earnings record or a great- grandparent or step great-grandparent. Nothing is clearly established for other kin caregivers, such as siblings, uncles or aunts.

How much can BE RECEIVED?

Generally, a child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died. **To summarize, in order for a grandchild to collect social security benefits based upon the grandparent's eligibility, four conditions must be met:** 1. Child must live with grandparent at least six months before the grandparent is eligible for benefits 2. Grandparent must be the caregiver 3. Grandparent must be eligible for social security benefits 4. Parents must be deceased or disabled. For additional Information on financial resources visit the following websites.

Social Security Administration http://www.socialsecurity.gov/OP_Home/handbook/handbook.03/handbook-toc03.html

NYS Kinship Navigator www.nysnavigator.org

www.myBenefits.ny.gov

HEALTH CARE OPTIONS

Medicaid is a federal and state health insurance program for low-income individuals and families who cannot afford to pay for medical care. The program is available to New York State residents who meet requirements for income limits and, if applicable, resource limits, and citizenship or immigration status. For information on how you can apply for Medicaid, call your local department of social services, or call **1-800-541-2831** Or Visit www.health.state.ny.us/health_care

Child Health Plus (CHPlus) is a federal and state health insurance program for children under 19 years old whose family income is too high to qualify for Medicaid. CHPlus coverage is provided through managed care organizations. For more information, and to find out where to apply, call **1-800-698-4543** or visit www.health.state.ny.us/health_care

Family Health Plus (FHPlus) is a federal and state health insurance program for uninsured, low-income adults ages 19 through 64, with or without children, who are not eligible for Medicaid and who have no other health insurance. The program is available to New York State residents who meet requirements for income and, if applicable, resources and citizenship or immigration status. FHPlus coverage is provided through managed care organizations. For more information, and to find out where to apply, call **1-877-934-7587** or visit www.health.state.ny.us/health_care

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EDUCATION

According to the New York Education Law § 3202 a person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such a person resides without the payment of tuition.

Enrollment in School

Even if children are living with persons in a parental relationship (including the new parental designees), they need to fulfill other criteria in order to qualify for free tuition. School districts often demand proof of legal custody or guardianship as a requirement for school admission or as documentation of residency.

Court orders, however, are not required under the Education Law. A district may require a sworn affidavit from the parent's acknowledging their transfer of custody and control. Students must prove by an examination of the totality of the circumstances that they are permanent residents of the school district, intending to remain permanently in that district. Because grandparents can show that the child is residing with the intent to remain, they do not need legal custody or guardianship to get children accepted (tuition free) for public school in the districts where they reside. In sum, the caregiver must show that they have assumed the care and control of the child. This can be done by affidavits (notarized sworn statements). The caregiver must also prove that the child resides in their home, with the intention to remain. This can be also be proven by an affidavit accompanied by documents that show where the child resides. However local school districts have different practices in this area and the caregiver should inquire with the school district and possibly with a local attorney knowledgeable about education law.

Special Education

Any student with a disability is entitled to receive a "free and appropriate public education in the least restrictive environment." If you feel that a child has a disability and would benefit from special services you must request this in writing. Send a letter to the Committee on Special Education in your school district or to the principal of your area school. Your letter should include your reasons for making this request and any details that describe the child's areas of difficulty. Date the letter and keep a copy for your records. The Committee on Special Education (CSE) will send you a plan for an evaluation.

Federal law permits grandparents and other relative caregivers to participate in the deliberations of the CSE. The evaluation must include a physical examination, an individual psychological evaluation (when necessary), a social history, an observation of the student in the classroom and appropriate educational evaluations and assessments relating to the areas of suspected disability. Once you agree upon the appropriate tests, sign and return the plan. In New York, the school district has 40 school days from the date of the grandparent's original letter or within 30 school days from receipt of the signed consent to complete the evaluation

Although the Committee on Special Education is responsible for making all the arrangements for the evaluation, you also have the right to bring or send additional information about your grandchild to the Committee. The results of the evaluation are used to determine what the child's individual needs are and if your grandchild has a disability.

If the evaluation determines that a child requires special education, the recommendation will identify the disability; describe your grandchild's strengths and areas of need; list goals that the child should reach in a year's time, include short-term instructional objectives to be mastered or major accomplishments to be gained that will lead toward reaching the annual goals, and, identify the types of programs and services that your child will receive. All of this information will be included on your child's Individualized Education Program (IEP).

You will be sent a copy of the IEP, and as the authorized caregiver, you must approve it. Read it carefully to make sure it does what it is meant to do. Consider the following: Does the IEP cover all child's development including behavior, socialization, communication, self-help, academic and motor skills? Does it state specifically how goals and objectives will be measured? Is it realistic? Does it encourage growth at a reasonable rate? Is it written in language that you can understand and discuss? Once your child has begun the IEP process, he or she will be reviewed annually and reassessed at least every three years. Alternative programs should be considered only when the student's needs cannot be met within the regular school setting. The success of any student's educational program relies on the active participation of all persons responsible for the student. Your involvement, as a caregiver is essential.

Early Intervention Program

Early Intervention Program for infants and toddlers with disabilities and their families. First created by Congress in 1986 under the Individuals with Disabilities Education Act (IDEA), the EIP is administered by the New York State Department of Health through the Bureau of Early Intervention. In New York State, the Early Intervention Program is established in Article 25 of the Public Health Law and has been in effect since July 1, 1993. To be eligible for services, children must be under 3 years of age and have a confirmed disability or established developmental delay, as defined by the State, in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive.

Committee on Preschool Special Education (CPSE)

The Committee on Preschool Special Education meets requirements of Chapter 243 of the laws of 1989 for participating school districts. A shared coordinator works with parents, school district officials, Oneida and Madison county officials and agencies conducting programs for preschool children to implement the Commissioner's Regulations for services to three and four-year-old children with disabilities. The coordinator schedules and coordinates meetings, follow through on process/procedures for placement, and acts as a liaison with parents and agencies.

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The McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act was signed into law in January 2002 as part of the No Child Left Behind Act of 2001 (NCLB), which amended the Elementary and Secondary Education Act. The McKinney-Vento Act ensures educational rights and protections for children and youth experiencing homelessness, including those with disabilities. Students who are both homeless and eligible for special education services present unique challenges for schools in terms of identification and continuity of service.

Children and youth experiencing homelessness find shelter in a variety of places. The Act defines who is considered homeless. According to the U.S. Department of Education, people living in the following situations are considered homeless:

- Doubled up with family or friends due to economic conditions
- Living in motels and hotels for lack of other suitable housing
- Runaway and "Throwaway" children and youth
- Homes for unwed or expectant mothers for lack of a place to live
- Homeless and domestic violence shelters
- Transitional housing programs
- The streets
- Abandoned buildings
- Public places not meant for housing
- Cars, trailers, and campgrounds
- Awaiting foster care
- Migratory children staying in housing not fit for habitation

Requirements for Schools

The McKinney-Vento Act provides certain rights for homeless students. They include waiving certain requirements such as proof of residency when students are enrolling and allowing categorical eligibility for certain services, such as free textbooks. The Act also states:

- Homeless students may attend their school of origin or the school where they are temporarily residing.
- Homeless students must be provided a written statement of their rights when they enroll and at least two times per year.
- Homeless students may enroll without school, medical, or similar records.
- Homeless students have a right to transportation to school.
- Students must be provided a statement explaining why they are denied any service or enrollment.
- Students must receive services, such as transportation, while disputes are being settled.
- Students are automatically eligible for Title I services.
- School districts must reserve a portion of Title IA funds to serve homeless students.
- School districts must review and revise policies that provide barriers to homeless students.
- Schools must post information in the community regarding the rights of homeless students, in schools and other places that homeless families may frequent. School districts must identify a McKinney-Vento Liaison to assist students.

For additional information on this topic visit the following websites.

Office of Temporary and Disability Assistance

<http://otda.state.ny.us/main/programs/housing/spu.asp>

<http://www.nationalhomeless.org/publications/facts/McKinney.pdf>

<http://www2.ed.gov/policy/elsec/leg/esea02/pg116.html>

STATUTES & REGULATIONS

The Kinship Caregiver Support Act (S. 661/H.R. 2188) Offers Help to Children Raised by Relatives

The Kinship Caregiver Support Act is intended to assist the millions of children who are being raised by their grandparents and other relatives because their parents are not able to care for them. Senators Hillary Rodham Clinton (D-NY), Olympia Snowe (R-ME), and Thad Cochran (R-MS) introduced S. 661 in the U.S. Senate in February 2007. Representatives Danny Davis (D-IL) and Timothy Johnson (R-IL) introduced H.R. 2188 in the U.S. House of Representatives in May 2007. The Kinship Caregiver Support Act includes important provisions to help different groups of kinship care families.

1. Establishes a **Kinship Navigator Program**, which will fund grants to help link relative caregivers, both inside and outside of the formal child welfare system, to a broad range of services and supports that they need for their children and themselves. It also will help agencies more effectively and efficiently serve kinship care families. State agencies, agencies serving large metropolitan areas, and Indian tribal organizations may apply for the competitive grants.

2. Establishes a **Kinship Guardianship Assistance Program**, which will help ensure permanent homes for some children living with relatives. It gives states the option to use federal funds for subsidized guardianship payments to relative caregivers on behalf of children they cared for in foster homes and are committed to caring for permanently outside of the formal child welfare system. In both S. 661 and H.R. 2188 children eligible for federal foster care payments are eligible for the program. H.R. 2188 also reaches more broadly to cover children in foster care with relatives who meet state safety standards but do not qualify for IV-E only because they are not formally licensed. In both bills, before making subsidized guardianship payments, state agencies must rule out return home or adoption for the children and ensure that placement with a legal guardian is the best permanency option for the child. Both the Senate and House bills make youths exiting from foster care to legal guardianship eligible for federally-supported independent living services, but in the Senate bill it is after age 16 and in the House bill after age 14. The House bill also clarifies that these same children exiting from foster care at age 14 are eligible for education and training vouchers.

3. Requires state child welfare agencies to **provide notice, within 60 days of the removal of a child from the custody of the child's parents, to all grandparents and other adult relatives of the child**, subject to exceptions due to family or domestic violence. This provision allows grandparents and other relatives to get involved in the child's care early on. This will help connect children earlier with relatives who may be able to care for them.

4. Allows states to **establish separate licensing standards for relative foster parents** and non-relative foster parents, provided both standards protect children and include criminal record checks. This provision recognizes that certain licensing standards for non-relative foster parents, such as requiring a separate bedroom for each child, may not be appropriate for foster parents who are related to the child. Such a change may make some relative foster parents eligible for a higher payment and also allow states to receive federal support for more children living with relatives. 5. H.R. 2188 includes two additional provisions, not in S. 661, which would help to ensure that grandparents and other relatives raising children get the help they need. It clarifies that the reference to family support in the Promoting Safe and Stable Families Program includes services to assist kinship caregivers or guardians in locating and accessing needed services. It also includes a requirement that staff preparing case plans for children in foster care and families considering guardianship are made aware of the full range of permanency options and supports for children and guardians. <http://www.childrensdefense.org>.

Effective April 1, 2011

Social Service Law 392 Services for relative caregivers.

Local social service districts shall make available through the district's website or by other means information for relatives caring for children outside of the foster care system. The information shall include but not be limited to the following:

1. information relating to child only grants, including but not limited to how to apply for child only grants; and
2. information on department of family assistance or local departments of social services funded resources for relative caregivers, including those that provide supportive services for relative caregivers.

2006 N.Y. Laws, A 9617, Chap. 12 – Sec. 1. Allows the court to place a child with a relative or “another suitable person” who has indicated a desire to become a foster parent for the child. **Sec. 2.** Clarifies that a relative shall not have previously refused to be considered as a foster parent or custodian of the child; refusal due to an inability to provide immediate care because of a lack of resources shall not constitute a previous refusal. Clarifies that no child shall be placed with a relative before final approval or certification of such relative as a foster parent.

2005 N.Y. Laws, Chap. 671 - Requires the local DSS to conduct an immediate investigation to locate all suitable relatives of a child over the age of five who played a significant positive role in the life of the child. Requires that the relative be informed of the proceeding, of the opportunity for becoming foster parents, or seeking custody, or care of the child and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are not successful.

2005 N.Y. Laws, S 3216, Chap. 119 – Allows the parent of a minor to designate another person as a person in parental relation to a minor, for a period not to exceed six months, for the purpose of making education and health decisions regarding the child. Allows the designation to specify the treatment, diagnosis or activities for which consent is unauthorized, information about non-authorized treatment or any other limitation. Allows a parent to revoke a designation by notifying, either orally or in writing, the school or health care provider. Specifies that the designation shall not cause a change in the child’s school district and presumes that the child is a resident of the school district in which the parent resided at the time the designation was made. Provides immunity to school personnel and health care providers.

2003 N.Y. Laws, S 6818, Chap. 749 - Allows a parent to authorize an adult to care for a minor child and consents to health care treatment, health plan enrollment, school enrollment, absence from school, and participation in school programs and school sponsored activities.

Certification / Approval of Emergency Non-Relative and Relative Foster Homes (Title 18 of NYCRR, Subchapter C, Article 3, Part 443, Section 443.7)

(A) A potential foster home or the home of a relative of a foster child may be certified or approved as an emergency foster home under the following allowable circumstances:

(1) Allowable circumstances:

- Child is removed from his or her own home (Act 1021, 1022, 1024,1027)
- Child is removed and placed into foster care (Article 3, 7, 10, 384)
- Child needs to be placed in a foster home, social services must record a compelling reason why such home needs to be certified or approved on an emergency basis.

(2) An eligible relative or non-relative, is identified by the child, child's parent or step parent (s), the court, a representative of the local district or other interested party, as potentially appropriate to provide foster care to the child or such person or relative volunteers to provide foster care to the child. For the purposes of this section, an eligible non-relative may include, but is not limited to, a child's godparent, neighbor, family friend, or an adult with a positive relationship with the child.

(B) Before placing a foster child with a potential caretaker or eligible relative on an emergency basis the authorized agency must:

(1) Secure a signed and dated statement from the potential caretaker or eligible relative indicating the exact relationship to the child and the child's parent (s), that the potential caretaker or eligible relative is willing to provide foster care for the child and an assurance that the potential caretaker or eligible relative understands that the child is in the legal custody of the Commissioner of social services and that by accepting responsibility for providing foster care for the child, potential caretaker or eligible relative agrees to comply with foster care requirements, including, but not limited to those involving the role and authority of the certifying or approving authorized agency and the social services district with legal custody of the child to supervise the placement.

(2) Perform a home study of the potential caretaker's or eligible relative's home and family on an expedited basis which assesses the potential caretaker's or eligible relative's home to ensure that there is no apparent risk to the health and safety of the child;

(3) Perform a home study of the potential caretaker's or eligible relative's home and family on an expedited basis which assesses the potential caretaker's or eligible relative's family, focusing on the following factors:

- The family's relationship with the child, the child's parent (s)
 - The care provided to other children in the home by the potential caretaker or eligible relative;
 - The potential caretaker's or eligible relative's knowledge of the circumstances and conditions that led to the need for the child's foster care placement
 - The past role of the potential caretaker or eligible relative in helping and/or protecting the child from and/or preventing occurrences of abuse or maltreatment of the child; and
 - The present ability of the potential caretaker or eligible relative to protect the child placed in its home from abuse or maltreatment and the potential caretaker's or eligible relative's ability to understand the need to protect the child from abuse or maltreatment;
- (4) Explain to the potential caretaker or eligible relative the agency's role and authority to supervise the placement;
- (5) Obtain information necessary to contact character references pursuant to this Part; and
- (6) Review agency records to determine if the potential caretake(s) or eligible relative (s) have a prior history of abuse or maltreatment.

(C) If the home is found suitable after the requirements the potential caregiver will be certified or approved as an emergency foster home or an emergency relative foster home for 90 days from the date of placement of the child in the home.

(D) The potential caretaker or eligible relative must execute an agreement with the authorized agency within seven days of placement that provides that the potential caretaker or eligible relative will comply with provisions of this Part.

(E) Within 7 days of placement, the authorized agency must obtain:

- (1) A completed State Central Register Clearance form, and submit such form to the Office of Children and Family Services pursuant to section 424-a of the Social Services Law and section 443.2(b)(8) of this Part; and
- (2) If the applicant or other person 18 years of age or older residing in the home or resided in another state at any time during the five years preceding the emergency certification, the agency will request child abuse and maltreatment information maintained in the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence.

(F) Upon the foster child's placement in the certified or approved emergency foster, each person over the age of 18 currently residing in the home will need to be fingerprinted and subjected to a criminal history record check performed by both the Division of Criminal Justice Services and the Federal Bureau of Investigation.

(G) Emergency foster homes and emergency relative foster homes certified or approved on an expedited emergency basis for 90 days, may continue to provide foster care beyond the 90th day of placement if they are finally certified or approved on or before the end of the 90th day. For an emergency foster home to receive final certification or approval, all requirements for certification or approval as a foster home as set forth in this part must be met within 90 days from the date of placement.

(H) Continued Placement

(1) An emergency foster home certified or approved on an expedited emergency basis for 90 days in accordance with this section may continue to provide foster care beyond the 90th day of certification or approval as an emergency foster home when the foster parent has otherwise satisfied all of the requirements for final certification or approval as a certified or approved foster home except for the completion of the Statewide Central Register of Child Abuse and Maltreatment check process in accordance with the criminal history record check process.

(2) Such certified emergency foster parent or approved emergency relative foster parent may continue to provide foster care until the completion of the Statewide Central Register of Child Abuse and Maltreatment check process or unless the certification or approval is otherwise revoked by the authorized agency for cause in accordance.

(3) Upon receipt of the result (s) of the Statewide Central Register of Child Abuse and Maltreatment and the criminal history record check (s) from the Office of Children and Family Services, the authorized agency must make a decision whether to finally certify or approve such emergency foster parent within 60 days of the receipt of such results.

Once the Statewide Central Register of Child Abuse and Maltreatment check process and criminal history record check process are completed, and the authorized agency determines that the home should continue to be certified or approved, a final certification or approval must be issued for the home.

(I) Failure to meet the requirements for certification or approval of the foster home. If the emergency foster parent or the relative foster parent (s) fails to meet all requirements for approval within 90 days from the date of placement, the authorized agency must:

(1) Provide notice to the foster parents or relative foster parent (s) within the first 90 days of placement if such requirement (s) for certification or approval as a foster home have not been or cannot be met. Such notice must be provided no later than 20 days prior to the expiration date of the emergency certification or approval and must identify the particular problem (s) that constitute a barrier to certification or approval as a foster home;

(2) Revoke a foster parent (s) or a relative foster parent (s) certification or approval if all requirements for approval are not met within the first 90 days from the date of placement;

(3) Upon revocation of an approval or certification, remove the child from the home of the relative or foster parent, place such child in a suitable certified foster home or an approved relative foster home, and inform the relative of the right to request a hearing in accordance with the provisions of section 400 of the Social Services Law; and

(4) Remove the child from the home of the foster parent or relative pursuant to section 400 of the Social Services Law and section 443.5 of this Part when health and safety risks to the child warrant such removal and place the child in a suitable certified foster home or an approved relative foster home. At the time the child is removed from the home, the relative or caretaker foster parent must be informed of the right to request a fair hearing in accordance with the provisions of section 400 of the Social Services Law.

***The information in this booklet is not legal advice
nor should it be substituted for legal advice.***

FREQUENTLY ASKED QUESTIONS ABOUT RELATIVES RAISING CHILDREN

Q. Who are “kinship caregivers”?

A. Any non-parent caregiver, including grandparents, relatives, and even non-relatives, who provides full time care for children in their home is a kinship caregiver. There are two basic types of kinship caregivers: those who are not foster parents and those who are foster parents. When this term is applied to foster parents it usually means grandparents and other relatives, and not unrelated caregivers.

Q. What laws apply to “kinship care”?

A. There are many laws that apply to non-parents who are caring for children, including laws governing their authority, access to records, custodial rights, financial assistance, and access to services. Most of these laws don’t use the term “kinship care.” Instead, laws use other terms, like “person in parental relation”, “person upon whom a child is dependent,” etc. Some laws only apply to grandparents, some to grandparents and relatives, some to all caregivers, including non-related caregivers.

Q. Can kinship caregivers enroll children in school?

A. Yes. Some school districts will demand legal custody or guardianship. Such requirements can be challenged by proving that the caregiver is really taking care of a child and that the child is really residing permanently with the caregiver.

Q. What are my rights as a grandparent? As another relative?

A. Grandparent Rights traditionally refer to the right to visitation. Grandparent visitation law dates back to the 1960’s when states began to enact statutes that gave grandparents the right to seek visitation. It is important to understand that no grandparent has a right to visit their grandchildren. They only have a right to seek visitation. Visitation laws commonly talk about grandparents visiting children who live with their parents, but laws will also govern grandparent visitation with children who are in state care. Recently, states have enacted laws providing certain other “rights” to grandparents. Such “rights” are usually about very limited legal situations, for instance, notice about neglect proceedings or custody. In New York, a special statute governs grandparents who are seeking custody of children who are living with them.

However, there are no laws that treat grandparents as the natural guardians of their grandchildren and there is no grandparent right to assume custody when parents cannot parent. For other relatives, in certain limited circumstances laws may provide family members more “rights” than strangers. For instance, federal law will pay a special public assistance grant to blood relatives who are caring full time for children, and state and federal laws insist upon a search for relatives when children are removed from their parents. These statutory rights are just part of a larger discussion about families having a “fundamental right” to raise children when parents are unavailable. In other words, the extension of parental rights to family members who’ve assumed parental duties or who want to assume such duties. The U. S. Supreme Court has declared that under certain circumstances when relatives have assumed parental duties, such a transfer of rights does occur. However, few courts have chosen to provide parental rights to family members.

Q. What is the difference between guardianship and custody?

A. The distinctions between guardianship and custody are the subject of much confusion, even among legal professionals. A discussion of the similarities and distinctions breaks down into three areas: court procedures, statutory powers, and actual practices. For court procedures, the standards in disputes between parents and non-parents are the same for both guardianship and custody. The standard is that both procedures must find an “extraordinary circumstance” before deciding the best interests of children. But, the procedural investigations differ. However, only guardianship proceedings must include reports on criminal record checks and child abuse registries. Regarding statutory powers, there are many laws that declare what “parents and guardians” can do. Most of these do not include legal custodians. Instead, they define certain decision-making powers only for parents and guardians, including medical decision-making. In practice, guardianship and legal custody have almost identical authority. Even the exclusion of medical authority is usually ignored. However, incidences do occur where a medical provider balks at accepting the authority of a non-parent legal custodian. Bottom line, the legal distinctions are often inconsequential and do not affect care giving.

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Q. Do I need a lawyer to file for visitation/custody/guardianship?

A. If you have the consent of the parent (s), then an attorney may not be necessary. If the evidence is very strong to prove that a parent is unfit then you may be able to prevail without an attorney. If the outcome is uncertain, and it is likely that the proceedings will go to trial, then a lawyer is certainly a big plus. However, under all circumstances you have a legal right to represent yourself “pro se,” which means on your own. While there is very little legal representation for kinship caregivers, many kinship programs provide legal consultations and a few offer representation.

Q. Can I get public assistance for a child in my care? If I can, how much can I collect in public assistance for children in my care?

A. Non-parents who are providing full time care for children can receive a public assistance grant which disregards their income and resources. Because non-parents have no legal obligation to support children, such grants are based “only” on the income and resources of children. Local public assistance offices may use different names for this grant but it is available everywhere. A full grant could pay between \$300 to \$500 per month for one child. For each additional child the grant increases between \$100 and \$200. However, the calculation of the grant amount is subject to a number of factors, including charges for room and board and other sources of income for the child.

Q. The parents do not have any money to pay child support. What will happen when DSS goes after them?

A. Family Courts have special proceedings where judges or special support magistrates decide how much support should be paid by the parents. The local department will go to court in order to seek repayment for its expenses. The court independently decides who pays how much and may recognize that very little can be paid, or it may decide to penalize a parent for non-payment. Penalties include garnishing salaries, suspension of driver’s licenses, and even incarceration. While non-parents are legally obligated to inform the local department about the whereabouts of the parents, there is an opportunity afforded to claim an exemption. If the caregiver believes that they or the children in their care may be subject to physical or emotional harm then they may ask to be excused from providing information about the parents.

Q. How does CPS determine who is a “suitable” relative when a child is removed from the home?

A. Once a child is removed, the local department must go to court and start an “Article Ten” proceeding. The Family Court judge will then make all decisions regarding the placement of children. The judge is legally obligated to ask the department about relatives, including all grandparents, who might care for children and the department is obligated to search for relatives including all grandparents. The scope and diligence of this search depends on many factors, and the law about searches was recently amended by the federal government. The search must occur within thirty days of a child’s removal and all notified relatives must be informed of their options and the consequences of children entering foster care with non-relative foster parents. If a relative is identified, the court may place the child with the relative. Courts have a variety of ways to facilitate the placement ranging from temporary custody to kinship foster care, or permitting the relative to on their own start a separate proceeding for custody.

Q. I would like to adopt my grandchild. What will change?

A. Adoption means that you become the legal parents of the child. The birth parents no longer have any parental rights. The new adoptive parent can make all parental decisions and assumes all parental responsibilities, including the obligation to support the children. You assume the support obligation and so you can no longer get a “child-only” (nonparent) grant. But the child may still be eligible for benefits under any program that cover parents and children. Also, adoption means that you can change the child’s name, get access to all records, make all decisions, and travel anywhere

Q. How do I get medical benefits for the child?

A. Because you are not the parent, you can apply for a “non-parent” public assistance grant. If the child has little income or resources, you will receive the grant and automatically qualify the child for Medicaid. In the alternative, you may seek health coverage thru the State Child Health Program, which also provides health insurance for children. Lastly, you can put the child on your own private health insurance. However, not all policies will cover dependent children who are not your own. You should review your policy, and if you have yet to petition for custody or guardianship, then make sure that your policy covers either or both legal arrangements.

Q. Aside from financial assistance, what other resources are available?

A. Many state agencies offer services that could help caregivers. For instance, the local Office for the Aging has special programs to assist the elderly. Since many kinship caregivers are over 55 years of age, they qualify for aging programs, including some legal assistance. Also, some county Offices for the Aging have specialized programs for kinship caregivers. The New York State Office of Children and Family Services administers thirteen programs, serving about 20 counties. Also, Cornell Cooperative Extensions, Catholic Charities, Jewish Board of Family Services, and other non-profit agencies have specialized kinship services such as **The Neighborhood Center Inc. “Kin and Kids” Outreach & Support Program.**

Q. Who can become a Foster Kinship Parent?

A. The following relatives can become kinship foster parents: grandparents, aunts, uncles, brothers, sisters, cousins, great aunts and uncles, (including those related by blood and through marriage).

Q. Do kinship foster parents have legal custody of the child?

A. No. A kinship foster care parent has temporary physical custody. Legal custody of that child is with the state or the agency acting for the state. This means that the kinship foster care parent takes care of the child's daily needs but cannot make any major decisions regarding the child without first obtaining the consent of the agency that acts for the state.

Q. Is Kinship Foster Care Permanent?

A. No. Kinship foster care may be for a temporary or long-term period, but it is not permanent. Like regular foster care, the goal is to find a permanent safe and healthy home for the child. The Child Welfare Agency will first try to reunite the parents with the children but if this is not possible, then the agency must have another plan for the child. The plan may include adoption, guardianship or another permanent living arrangement for the child. As a kinship foster parent, you may have to decide whether you are going to adopt your grandchildren, become their guardian or whether you are going to allow another adoptive family to be found.

Q. As a kinship foster parent what rights do I have if the parent wants the child returned?

A. As a foster parent, you provide the care to the children, but the child welfare agency has legal custody of the child. The agency has the right to remove that child from your care at any time. If the parent is seeking custody of the child and is working on becoming a fit parent, the Child Welfare Agency will try to reunite the child and parent together again. However, if your grandchild has been with you in foster care for one year or more, you have the right to participate in any hearing regarding your grandchild's custody.

Q. What are the requirements to be kinship foster parents?

A. In order to be approved as a kinship foster care parent, you have to agree to a background check and you must be a relative of the child. In addition, you should meet the following criteria:

- Be over the age of 21, in good physical & mental health, free from communicable diseases.
- Can be employed as long as arrangements are made to have the child supervised at all times.
- Can be single or married as long as the person's marital status does not affect the person's ability to give adequate care to the child.
- Keep your home in good condition & not a hazard to the child's health or safety.
- Have sufficient sleeping arrangements and space.
- Never leave children under the age of 10 alone without competent supervision.
- Give the child good quality food.
- Keep the children's clothes, whether provided by the foster parent, the agency, or the child parents, in proper condition.
- Provide proper toiletry articles for the children in their care.
- Recognize and respect the religious wishes of the parents.
- Cooperate with the agency and report any incident which affects the child's well-being.
- Allow a representative from the child welfare agency to enter your home to investigate any normal complaint about the care of the child.
- Inform the Child Welfare Agency of any changes in the household.
- Agree to cooperate and assist with visits between brothers and sisters who have been placed apart.
- Arrange for school age children to attend school regularly.
- Cooperate with the agency regarding the services and discharge plan.
- Provide information about whether you have ever been convicted of a crime (a check will be made of any criminal history).
- Have adequate fingerprinting results (any people who are over 18 and live in the same household must also be fingerprinted).

Q. What is helpful as evidence if a grandparent seeks visitation with a grandchild?

A. Domestic Relations Law Section 72, which governs grandparent visitation, declares that grandparents may seek visitation when a parent is deceased or “where equity would see fit to intervene.” Courts have decided that only certain circumstances warrant court intervention.

Q. What if the child is an immigrant

A. Children who are without legal status to be in the United States may not be eligible for TA, Medicaid, and other benefits. However, a youth in foster care may be able to achieve legal status by applying for **Special Immigrant Juvenile Status (SIJS)**. A child or youth who has this status can obtain a green card, become a lawful permanent resident, get financial aid for college, and work in the U.S. For many youth in foster care who are undocumented immigrants, this is their only chance to file for legal status, and it has to be done before the youth turns 21. Ask the child’s law guardian/attorney for the child and DSS about whether the child can apply for this status. Children who live with a guardian or have been adopted after having been found dependent by the court also may be eligible for SIJS.

Q. What is helpful as evidence if I am filing for custody/guardianship?

A. Petitions for custody and guardianship are significantly different. Custody petitions are much simpler. However, for either petition you will need to show that the parents will consent or that you can claim an “extraordinary circumstance, (facts that show a parent’s unfitness or inability to parent). Other extraordinary circumstances are mental illness, abandonment, or situations where you’ve been caring for the children for an extended period of time. Showing extraordinary circumstances in your petition is an absolute necessity in order to go forward, so your petition must describe some facts that, if proven, would fulfill the extraordinary circumstances test.

Q. I was never notified that the child was removed or my rights. What can I do?

A. You can talk to the local DSS and see if they will identify you to the court as a suitable relative or you can go to court on your own and seek to “intervene” in the Article Ten proceeding. You can petition to become a foster parent under Family Court Act 1028-a. The opportunity to petition is subject to time limitations. Family Court Act Section 1017 states that “all grandparents” should be notified.

Q. How much will I receive in kinship foster care payments?

A. The amounts of the payments differ from county to county and depend on the age of the child, where the child lives, and whether the child has any special needs.

WEBSITE RESOURCES FOR CARGIVERS

AARP

<http://www.aarp.org/>

Benefits Quick LINK

Screens you and/or the children you are raising for 15 major public benefits for older adults and families with children. Other Benefits – child care, disabilities, special education, older adult benefits, etc.

www.aarp.org/quicklink **OR** www.myBenefits.ny.gov

Empire Justice Center (EJC) (formerly GULP)

119 Washington Avenue

Albany, NY 12210

(518) 462-6831; (800) 635-0355

(518) 462-6687 (fax)

Services: Child Care, Child Support, Civil Legal Services, Civil Rights, Consumer & Community, Development, Disability Benefits, Domestic Violence, Education, Health, Housing, Immigrant Rights, and Public Benefits

www.empirejustice.org

Empire Justice Center (EJC)

(Formerly Hudson Valley Poverty Law Center)

Pace University School of Law

John Jay Legal Services, Inc

80 North Broadway

White Plains, NY 10603

(914) 422-4333

(914) 422-4391 (fax)

Services: Child Care, Child Support, Civil Legal Services, Civil Rights, Consumer & Community, Development, Disability Benefits, Domestic Violence, Education, Health, Housing, Immigrant Rights, and Public Benefits

www.empirejustice.org

Empire Justice Center (EJC) (formerly GULP)

Rochester Office

One West Main Street, Suite 200

Rochester, NY 14614

(585) 454-4060

(585) 454-2518 (fax)

Services: Child Care, Child Support, Civil Legal Services, Civil Rights, Consumer & Community, Development, Disability Benefits, Domestic Violence, Education, Health, Housing, Immigrant Rights, and Public Benefits

www.empirejustice.org

Grand: online website for grandparents and grandchildren

<http://www.grandmagazine.com/article.asp?id=86>

Having a Voice and a Choice: Handbook for Relatives Raising Children

English & Spanish

<http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf>

Herkimer County Human Service Directory

<http://herkimercounty.org/content/Departments/View/3:field=documents:/content/Documents/File/1548.pdf>

Know Your Options: Relatives Caring for Children Brochure

<http://www.ocfs.state.ny.us/main/publications/Pub5120.pdf>

www.LawHelp.org/NY: This new, user friendly, "Super Website" helps low-income New Yorkers find out information about: Free legal service programs, Information about legal rights education, Links to social services and government agencies, Information about the court system, Resources available in a wide range of languages!

www.LawHelp.org/NY

Legal Information for Families Today (LIFT)

350 Broadway, Suite 400

New York, NY 10013

Hotline: (212) 343-1122

Office: (646) 613-9633

Fax: (646) 613-9632

www.LIFTonline.org

Legal Services of Central New York

Broome, Cayuga, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego and Otsego Counties. If you live in one of these counties (or if you have a legal problem in one of these counties), please call **Toll Free: 1-877-777-6152**.

<http://www.lscny.org>

NYS Citizens Coalition for Children

<http://nysccc.org/>

Connect NY is a consortium of libraries within New York State whose members have created a combined catalog of their collections.

www.nyconnects.org

NYS Department of Health (DOH)

Is the state agency that coordinates Medicaid, Child Health Plus, and other health care services for children and families, such as Early Intervention Services.

www.health.state.ny.us

NYS Kinship Navigator

877-4kininfo (454-6463)

<http://www.nysnavigator.org/>

NYS Office of Children and Family Services (OCFS)

Is the state agency that coordinates child welfare services (Child protective services, foster care/adoption, preventive services).

www.ocfs.state.ny.us

NYS Office of the Aging

<http://www.aging.ny.gov/NYSOFA/LocalOffices.cfm>

NYS Office of Temporary and Disability Assistance

(OTDA) is the state agency that oversees programs that provide assistance and support to eligible families and individuals (Temporary assistance, child support, food stamps, home energy assistance, etc.).

www.otda.state.ny.us

NYS Permanent Judicial Commission on Justice for Children

<http://www.nycourts.gov/ip/justiceforchildren/incarceratedparents.shtml>

Brochure: *Be Sure Your Child is Cared For and Safe*

<http://www.nycourts.gov/ip/justiceforchildren/NewContent/2-Incarcerated%20Parent%20Flyer-English.pdf>

New York State Unified Court System:

www.nycourts.gov

The National Committee of Grandparents for Children's Rights (NCGCR)

The National Committee of Grandparents for Children's Rights (NCGCR) is a national coalition consisting of individuals and group membership. The NCGCR's toll-free number at (866) 624-9900 provides information to grandparents who are advocating for their grandchildren. Information consists of current federal and state case law as well as entitlements and services available to grandparents in New York and around the country. 1-866-624-9900

www.grandparentsforchildren.org

Safe Link - Lifeline Assistance is a program created by the federal government to help provide discounted or free telephone service to income-eligible consumers. 1-800-SAFELINK

www.SafeLink.com

Social Security Survivors Benefits

<http://www.lawhelp.org/documents/117691Survivors%20benefits.pdf?stateabbrev=NY/>

DEFINITIONS

ACD (Adjournment in Contemplation of Dismissal): A judge puts off making a decision on a case. This is done to see if the **respondent** follows all of the directions given by the court. If the respondent follows all of the directions, the case might be dismissed. Depending on the kind of case, the decision might be put off 6 to 12 months.

Adjournment: To temporarily postpone or reschedule a case.

Adjudicate: The formal word for deciding a case in court.

ADA (Assistant District Attorney): A lawyer who represents the state in criminal prosecutions.

Adoption and Safe Families Act (ASFA): A federal law that requires that a child who has been in foster care for 15 or more of the past 22 months be returned home or steps must be taken to have the child adopted.

Affidavit: A sworn statement made in writing and signed.

Allegation: An unproven fact.

Child Abuse: The harming of a child through physical, sexual, mental, or emotional injury.

Child Neglect: The failure to properly care for a child. This can include failure to provide enough food, shelter, clothing or appropriate supervision. It can also include failing to provide adequate education (**educational neglect**) or medical care (**medical neglect**). It can also include alcohol or drug use.

Custody: To have custody means to be in charge of someone. There are two kinds of custody: Physical & Legal. Often, the same person has physical and legal custody.

Dispositional Hearing: A hearing that takes place after the **fact-finding hearing** where a judge makes a final ruling.

Emancipation: The declaration that a person who has not reached full legal age is self-supporting and independent of parental control. There is no court order for emancipation in New York State.

Fact-Finding Hearing: A hearing to determine whether the **allegations** of the **petition** have been proven. This is called a trial in other courts.

Family Offense: Any acts committed by a family member: a person to whom you are married too, divorced from, a person that you have a child in common with, or a person with whom you had an intimate relationship with. An act refers to disorderly conduct; harassment; aggravated harassment; menacing; reckless endangerment; assault or attempted assault; or stalking.

Family Treatment Court: A special courtroom that hears child neglect and abuse cases involving parents with substance abuse problems.

Fictive Kin: Refers to a person not related by birth or marriage who has a significant emotional and positive relationship with the child.

Guardianship: There are two kinds of guardianships. Guardianship could consist of a person or property. A guardian of a child is responsible for the child and makes decisions about the everyday life of the child. Guardians have physical & legal custody over a child.

Informal Kinship Care Giving: Refers to a nonparent adult that provides full - time care for children in their home. Caregivers may be a relative or other non-parent adult such as a family friend, adult siblings, grandparents, aunts, uncles, and cousins.

Joint Custody: In Family Court, joint custody refers to joint legal custody meaning both parents must agree on the important decisions made on behalf of the children. They share the responsibility regardless of which parent lives with the children. Usually one parent will have physical custody and the other will have visitation.

Juvenile Delinquent: A youth 13– 15 years of age who commits an act that if committed by an adult, would constitute a crime.

Juvenile Offender: A youth 16– 19 years of age who commits a serious crime which if committed by an adult, would constitute one of the following crimes: murder, kidnapping, arson, assault, manslaughter, rape, sodomy, or robbery.

Kinship Foster Care (Formal): Is when a relative becomes a foster parent to a child who is placed in foster care through the Department of Social Services. Kinship foster parent only has physical custody where as the Commissioner of the Department of Social Services has legal custody. The kinship foster parent receives money every month to care for the child.

Legal Custody: Is when an adult is responsible for making the important decisions about the life of the child, such as medical, education and religion decisions. Only the adult with legal custody can make these decisions and is referred to as the custodian.

New York State Central Register of Child Abuse and Maltreatment (SCR): A State Hotline that receives telephone calls alleging child abuse or child neglect. The SCR gives information from the calls to the local child protective agency for investigation.

Non - Custodial Parent: The parent who is not living with the child.

Physical Custody: Is when an adult is responsible for a child and takes care of the day to day needs of the child. Usually the child lives with this adult.

Permanency Hearing: A proceeding, held eight months after a child has been placed in foster care, and every 6 months after that. At the hearing the judge reviews the **permanency plan** which says where the child will live permanently.

Permanency Plan: A plan developed for a child placed in foster care to determine where the child will live permanently. There are five possible options: Return of the child to the parent; Adoption; Legal guardianship; Permanent placement with a fit and willing relative; and Placement in another planned permanent living arrangement, such as independent living.

Person In Need of Supervision (PINS): A person under age 18 whose behavior is beyond the control of a parent or other lawful authority, and who a judge decides is in need of court-ordered supervision.

Petitioner: The person or agency that begins a case by filing a petition. Known as the “plaintiff” in other courts.

Preventive Services: Help provided to a family when a child is at risk of being removed from a home and put into the foster care system because of child neglect or child abuse.

Pro Se: A party to a case that represents him or herself, also called self-represented or unrepresented.

Respondent: The person or agency against whom a petition is filed. The respondent is known as the “defendant” in other types of courts.

Service Plan Review (SPR): A meeting held every six months when a child is in foster care. The SPR meeting consist of a discussion of reunification and services that are in place or needed.

TANF: Temporary Assistance for Needy Families. Financial assistance received through the Department of Social Services (DSS).

TPR (Termination of Parental Rights): The permanent end of the legal rights of the biological parents to their child. After a TPR the child is “freed” for adoption.

1027 hearing: 1027 is a section in the Family Court Act. Also called an “Intake Hearing”. A hearing held after a child is removed from his or her home without a court order because of suspected child abuse or child neglect. This hearing must be held as soon as possible to determine if the child should be sent to foster care or returned home.

1028 hearing: 1028 is a section in the Family Court Act. If a child is removed from a parent’s home for child abuse or child neglect the parent can request a 1028 hearing. At the hearing the court will decide if the child would be at “imminent risk” (immediate danger), if returned home. The hearing must be held within three days after the parent, or the parent’s lawyer, asks for it.

Acronyms

B2H—Bridges to Health

CPS—Child Protective Services

CTHP—Child /Teen Health Program

DSS—Department of Social Services

FCA—Family Court Act

DOH—NYS Department of Health

MA—Medical Assistance (Medicaid/Child Health Plus)

OASDI—Old Age, Survivor, and Disability Insurance

OCFS—NYS Office of Children and Family Services

OTDA—NYS Office of Temporary and Disability Assistance

SCR—Statewide Central Register of Child Abuse and Maltreatment

SSI—Supplemental Security Income

TA—Temporary Assistance

TANF—Temporary Assistance to Needy Families

TPR—Termination of Parental Rights

For Additional information visit the following websites

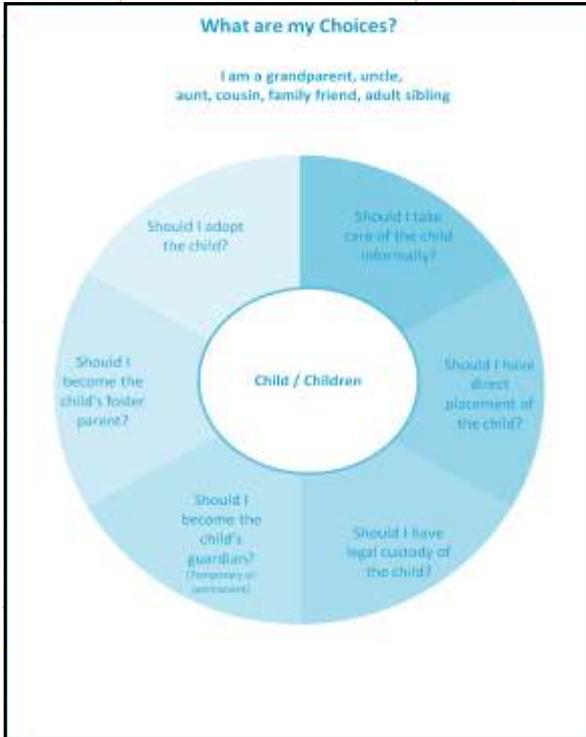
Legal Information for Families Today (LIFT)

http://www.liftonline.org/pdf/en_ABCs.pdf

Unified Court System

<http://www.nycourts.gov/courthelp/TermsGlossary.html>

The Kin and Kids Outreach & Support Program



A New York State Office of Children and Family
Services Kinship Caregiver Program