



# NYS Kinship Navigator

## 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.<sup>1</sup> The extent of the search is no longer completely discretionary with the Department of Social Services. 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.<sup>2</sup>

### 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.<sup>3</sup> 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. In petitions started before termination of parental rights, relatives may prevail.<sup>4</sup> But if the relative loses, upon appeal, one appellate court has declared that it lacks jurisdiction over a custody appeal that would be decided subsequent to termination.<sup>5</sup>

When petitions for custody or guardianship are filed **after termination**, 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. But recently one court has declared that it may be in the best interests of children to be placed with relatives rather than to be adopted by foster parents, *Matter of G. B.*, 801, NYS2d 233.

### **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." Over thirty states offer subsidized guardianship as an alternative to adoption but **New York does not have a provision for subsidized guardianship.**<sup>6</sup>

\* The above information is not legal advice. It is not a substitute for consulting an attorney. Up to date legal advice and legal information can only be obtained by consulting with an attorney.

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<sup>1</sup> N.Y. Family Court Act § 1017(1) and NY Social Services Law § 384-a. In practice, however, relatives are often not notified about removal of children from their parents or, if informed of removal, are not informed of their option to become foster parents. *See* State of New York Office of the State Comptroller, Division of Management Audit, Department of Social Services Kinship Foster Care Report, 95-106 (Nov. 22, 1996). *See also* U. S. Department of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families Children's Bureau, Report To The Congress On Kinship Foster Care, June 2000. p. 38, "Children in kinship care appear to have significantly higher well-being than children in non-kin foster care."

<sup>2</sup> 45 C.F.R. 1356.21 (i).

<sup>3</sup> Foster parents cannot be considered as a resource for permanent placement because of the contractual nature of their arrangement with DSS. *Smith v. Organization of Foster Families*, 431 U.S. 86, 97 S. Ct. 2094; 53 L.Ed.2d 14 (1977). "[A]ny such authorized agency may in its discretion remove such

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child from the home where the child was placed or boarded." Social Services Law § 383(2). But, Social Services Law § 383(3) permits foster parents who have been in continuous care of a child for twelve months to intervene in "any custody proceeding."

"[W]here a child has not been freed for adoption the court must determine whether it is nonetheless appropriate to continue foster care temporarily, or whether the child should be permanently discharged to the biological parent (or a relative or "suitable person")." *Matter of Michael B. v. Marvin B.*, 80 N.Y.2d 299, 314, 604 N.E.2d 122, 131, 590 N.Y.S.2d 60, 69 (1992); Social Services Law § 392(6)(a)-(c). "[I]n cases controlled by Social Services Law § 392(6), analysis must begin not by measuring biological parent against foster parent but by weighing past and continued foster care against discharge to the biological parent, or other relative or suitable person within Social Services Law § 392(6)(b)," *Matter of Michael B. v. Marvin B.*, 80 N.Y.2d 299, 314, 604 N.E.2d 122, 131, 590 N.Y.S.2d 60, 69 (1992).

<sup>4</sup> *In the Matter of Marylou L. v. Tenecha L.*, 182 Misc. 2d 457, 465, 698 N.Y.S.2d 827, 834 (Kings Co. Fam. Ct. 1999).

<sup>5</sup> *In re John C.*, 718 NYS2d 314 (1st Dept. 2000) Grandmother filed for custody of child in foster care, lost case and while custody petition was on appeal, child was freed for adoption; custody petition must be dismissed now - grandmother could seek to adopt.

<sup>6</sup> N.Y. Soc. Serv. L. § 453. Title IV-E of the Social Security Act.

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