



# NYS Kinship Navigator

## PASSPORTS FOR MINOR CHILDREN

All children regardless of age (including newborns and infants) must have their own passport in order to travel internationally. Passports are issued by the Department of State pursuant to federal law. In order to obtain a passport for a minor child, application must be made at a local post office or at a passport office or via mail to the Department of State's passport processing center. If you are in a hurry, there are many private services available that can walk your passport through on an expedited basis for an additional fee.

Federal regulations governing issuance of passports for children under age 14<sup>1</sup> require that:

(a) In general ...

### **2 Requirements:**

(A) Both parents, or the child's legal guardian, must execute the application and provide documentary evidence demonstrating that they are the parents or guardian; or

(B) the person executing the application must provide documentary evidence that they:

(i) have sole custody of the child;

(ii) have the consent of the other parent to the issuance of the passport; or

(iii) are *in loco parentis* and has the consent of both parents, of a parent with sole custody over the child, or of the child's legal guardian, to the issuance of the passport.

(b) Exceptions.—The regulations required by subsection (a) may provide for exceptions in exigent circumstances, such as those involving the health or welfare of the child, or when the Secretary determines that issuance of a passport is warranted by special family circumstances.

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<sup>1</sup> Pub.L. 106-113, Div. B, §1000(a)(7) [Div. A, Title II, § 236] div. B, § 1000(a)(7) [div. A, title II, § 236], <<22 U.S.C. 213 note>> Nov. 29, 1999, 113 Stat. 1536, 1501A-430., Subsection (a)(2)

Parents and guardians have a statutory right to make application for children under the age of 14. The statute mentions “sole custody,” which means that one parent who is the legal custodian may make application.

The statute also mentions “*in loco parentis*” which is a legal term referring to caregivers who have assumed parental duties. (“*In loco parentis*” is Latin for “in place of the parent”). Therefore legal custodians and other caregivers may make application and if they can document the consent of the parents or guardian, application should be successful.

Without parental consent, success will depend upon a showing of “exigent circumstances.”<sup>2</sup> Exigent means “requiring immediate aid or action,” and therefore the caregiver must show special reasons for caregiving and for seeking the passport.

According to statute, “No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States.”<sup>3</sup> However, this section does not authorize a mandatory oath of allegiance as a condition precedent to obtaining a valid United States passport.<sup>4,5</sup>

However, this documentation must be provided under penalty of perjury. It is a federal crime to willingly and knowingly make a false statement in the application for a passport that may result in fines or imprisonment. All minors under age 16 shall appear in person. If your child does not have identification of his/her own, you need to accompany your child, present identification and co-sign the application.

If you are behind in child support payments, you may not be able to get a passport.<sup>6</sup>

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<sup>2</sup> Id, Subsection (b).

<sup>3</sup> 22 U.S.C. §212

<sup>4</sup> *Woodward v. Rogers*, D.C.D.C. (1972), 344 F.Supp. 974, *aff'd* 486 F.2d 1317, 159 U.S.App.D.C. 57.

<sup>5</sup> This section (22 USC §212) and former §211 of this title are not in terms mandatory, and the Secretary may, in his discretion, either grant or withhold a passport as the public interests may require. 1901, 23 Op.Atty.Gen. 509.

<sup>6</sup> Op cit, div. B, § 1000(a)(7) [div. A, title II, §238], Nov. 29, 1999.

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