

## LEGAL FACT SHEET

### Relatives and Family Friends Seeking to Become Caregivers of Children in State Care\*

#### Article 10 Placements with Relatives via Custody or Foster Care

When children are removed from their homes by the local Department of Social Services (DSS), Family Court Act Article Ten Section 1017 provides that DSS 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, pursuant to an Article Six custody petition brought by the relative
2. Private placement (direct custody), pursuant to the Article Ten proceedings
3. Foster care placement, pursuant to the Article Ten proceedings.

These three placement options are result in different arrangements:

1. In an Article Six custody petition, the relative will need the consent of the parents or will have to 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. In a private placement direct custody 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. 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. See other fact sheets on adoption subsidies and guardianship subsidies (KinGAP). Subsidies are available to foster care children only, but only under certain circumstances.

The different options for care are explained more thoroughly in the Office of Children and Family Services booklets:

- [\*Know Your Resources: Nonparent Caregiver Benefits \(Pub. 5194\)\*](#)
- [\*Know Your Options: Kin Caring for Children \(Pub. 5175\)\*](#)
- [\*Make an Informed Choice: Kin Caring for Children \(Pub. 5120\)\*](#)
- [\*Know Your Permanency Options: The Kinship Guardianship Assistance Program \(Pub. 5108\)\*](#)

A more in-depth discussion of the state's obligation to locate and inform and what can be done if the search and information are not properly done is found in the Kinship Navigator Fact Sheets, "When a Child is Removed - Duty to Locate and Notify Relatives of Their Options for Care" and "When a Child is Removed and Relatives are Not Located or Not Notified of Their Options for Care".

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### For Children Already in Foster Care, Relatives Can Seek to Become Foster Parents

Family Court Act Article Ten Section 1028-a (FCA §1028-a) provides a procedure for certain related individuals to become foster parents of children who have been already placed in foster care with a non-relative foster parent.

The FCA §1028-a definition of who is a related individual reads: “i) the person is related to the child as described under paragraph (a), (b), or (c) of subdivision three of section four hundred fifty-eight-a of the social services law {SSL §458-a}...”:

SSL §458-a(3) states who are related:

- (a) is related to the child through blood, marriage, or adoption; or
- (b) is related to a half-sibling of the child through blood, marriage, or adoption and where such person or persons is or are also the prospective or appointed relative guardian or guardians of such half-sibling; or
- (c) is an adult with a positive relationship with the child, including, but not limited to, a step-parent, godparent, neighbor, or family friend...

Even for a such related persons, there is only a right to petition to become a foster parent when certain circumstances also exist; there is no right to become a foster parent. Those required circumstances are described in FCA §1028-a. Here is a summary of the FCA §1028-a required circumstances:

1. the relative wishes to become a foster parent and (if they had not previously refused, they had a good reason)
2. the local department of social services is not willing to permit the relative to become a foster parent, despite their ability to qualify
3. no more than six months has passed since the relative received notice about the child’s removal
4. no more than one year has passed since the child was removed.

If all four of these circumstances are presented in the petition and the petitioner has a relationship, then the court will order a hearing to decide whether foster care placement with the person related to the child is in the child’s best interests.

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