

## 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, pursuant to the Article Ten proceedings
  3. Foster care placement, pursuant to the Article Ten proceedings.
- 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 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, and only under certain circumstances.

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

Family Court Act Article Ten, Section 1028-a provides a procedure for relatives to become foster parents of children who were already placed in foster care. In December 2019, the definition of relatives was changed to include not just blood relatives, but also non-blood relatives (ex: step-parents), and family friends (sometimes referred to as “fictive kin”. There is no right to become a foster parent but if certain circumstances exist, a court can order the local DSS to place a child with a relative while the relative qualifies as a foster parent.

#### Under Family Court Act Article Ten, 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 department of social services 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.

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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.

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