




STRONGER

Volume III:
Information for
Non-Parent
Caregivers of
Children with
Incarcerated Parents



TOGETHER

**The Osborne
Association** 
Transforming Lives, Communities,
and the Criminal Justice System

STRONGER TOGETHER

Volume III: Information for Non-Parent Caregivers of Children with Incarcerated Parents

ABOUT THE OSBORNE ASSOCIATION

Founded in 1931, the Osborne Association works in partnership with individuals, families and communities to create opportunities for people affected by the criminal justice system to further develop their strengths and lead lives of responsibility and contribution. We design, implement, and advocate for solutions that prevent and reduce the damage caused by crime and incarceration.

ABOUT THE NEW YORK INITIATIVE FOR CHILDREN OF INCARCERATED PARENTS

The New York Initiative for Children of Incarcerated Parents was launched by the Osborne Association in 2006, following the creation of the *Children of Incarcerated Parents' Bill of Rights* by the San Francisco Children of Incarcerated Parents Partnership. The Initiative works with government, community, and faith-based partners to advocate for policies and practices that meet the needs and respect the rights of children whose parents are involved in the criminal justice system. The Initiative also serves as a tri-chair to the statewide Children of Incarcerated Parents Coordinating Council launched in October 2011.

ACKNOWLEDGMENTS

The *Stronger Together* handbooks owe their existence to the wisdom, insight, vision, and deep commitment of their original authors who in 1993 issued *How Can I Help?*, a series of three handbooks published by The Osborne Association. Written by Margaret Brooks (Volume I), Elizabeth Gaynes (Volume II), and Jane Schreiber and Elizabeth Gaynes (Volume III) and reviewed by an interdisciplinary advisory committee, much of what they wrote 20 years ago (for better or worse) holds true today. We also extend a heartfelt thank you to the children, youth, caregivers, and parents who shared their personal experiences and courage with us to enrich the updated handbooks.

The revised handbooks were updated by Elizabeth Gaynes, Tanya Krupat, Dana Lemaster-Schipani, and Joan Hunt. Volume III was developed by Gerard Wallace, and written by Gerard Wallace, Rachel Glaser, Michelle Rafael, Lynn Baniak, Tanya Krupat, Dana Lemaster-Schipani, and Elizabeth Gaynes. Virginia Lowery and Kasey Currier provided skillful copyediting.

We are grateful to Jedd Flanscha for his design, patience and persistence.

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ABOUT THE HANDBOOKS

In 1993, The Osborne Association published a three-volume handbook series entitled *How Can I Help? Working with Children of Incarcerated Parents*. Almost twenty years later, the handbooks have been revised and are republished here under the new title, *Stronger Together*. This reflects our view that we must come together to address the needs of children with incarcerated parents, including overcoming the isolation that comes from the stigma and shame associated with incarceration. The goal of the original handbooks and of those reissued in 2012 is to champion and support the hundreds of thousands of children in New York State (and the millions of children nationally) whose lives are disrupted by the arrest and/or incarceration of a parent.

While the handbooks have changed since 1993, much of the content of the first series is still relevant and forms the core of the republished Volumes I and II. ***Volume I: Experiences of Children of Incarcerated Parents*** focuses on children's feelings, experiences, and responses. ***Volume II: Maintaining and Strengthening Family Ties for Children of Incarcerated Parents*** discusses why and how to maintain parent-child relationships. ***Volume III: Information for Non-Parent Caregivers of Children with Incarcerated Parents***—an entirely new handbook—provides needed information for and addresses the most common concerns of caregivers. Please note that the original 1993 Volume III was a handbook of general resources, which is now out of print, and is available as a PDF file (as are the new handbooks) on the Osborne Association website at www.osborneny.org.

All of the *Stronger Together* handbooks include information, tools, and resources, as well as vignettes and quotes to illustrate real-life examples. They are written for a diverse and broad audience who significantly touch and influence children's lives, including caregivers of all kinds, professionals, volunteers, family members, and other caring adults. While the handbooks focus on children and the criminal justice system in New York State, they are designed to be helpful for those in other states as well.

A COUPLE OF CAVEATS ABOUT THE STRONGER TOGETHER SERIES:

First, *the handbooks focus on the majority of situations in which parents are incarcerated for non-child-related crimes*. They do not address situations where a parent harmed a child directly or indirectly, such as when a violent act was committed against the other parent, a sibling, or family member. These are complex cases and require careful and ongoing assessment, professional advice, and therapeutic support.

Secondly, while some of the information in the handbooks may apply to children whose parents are being held within immigration detention facilities or facing possible deportation, there are substantial differences in their experiences and the resources available to them. It was beyond the scope of this series to address these issues, though we offer resources online.

Lastly, we have tried to address as wide a range of experiences and circumstances as possible, but do not pretend to have covered all possible scenarios.

We are committed to empowering you to proactively reach out to children with incarcerated parents and their families to assist them in navigating this challenging and often painful experience. No matter which volume you pick up first, **we strongly recommend that you read Volume I in its entirety**. It will strengthen your own understanding of children's feelings and responses, which will strengthen your ability to effectively respond to children's needs and in turn create supportive and understanding communities for children and families to live in—and for parents to return to.

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INTRODUCTION

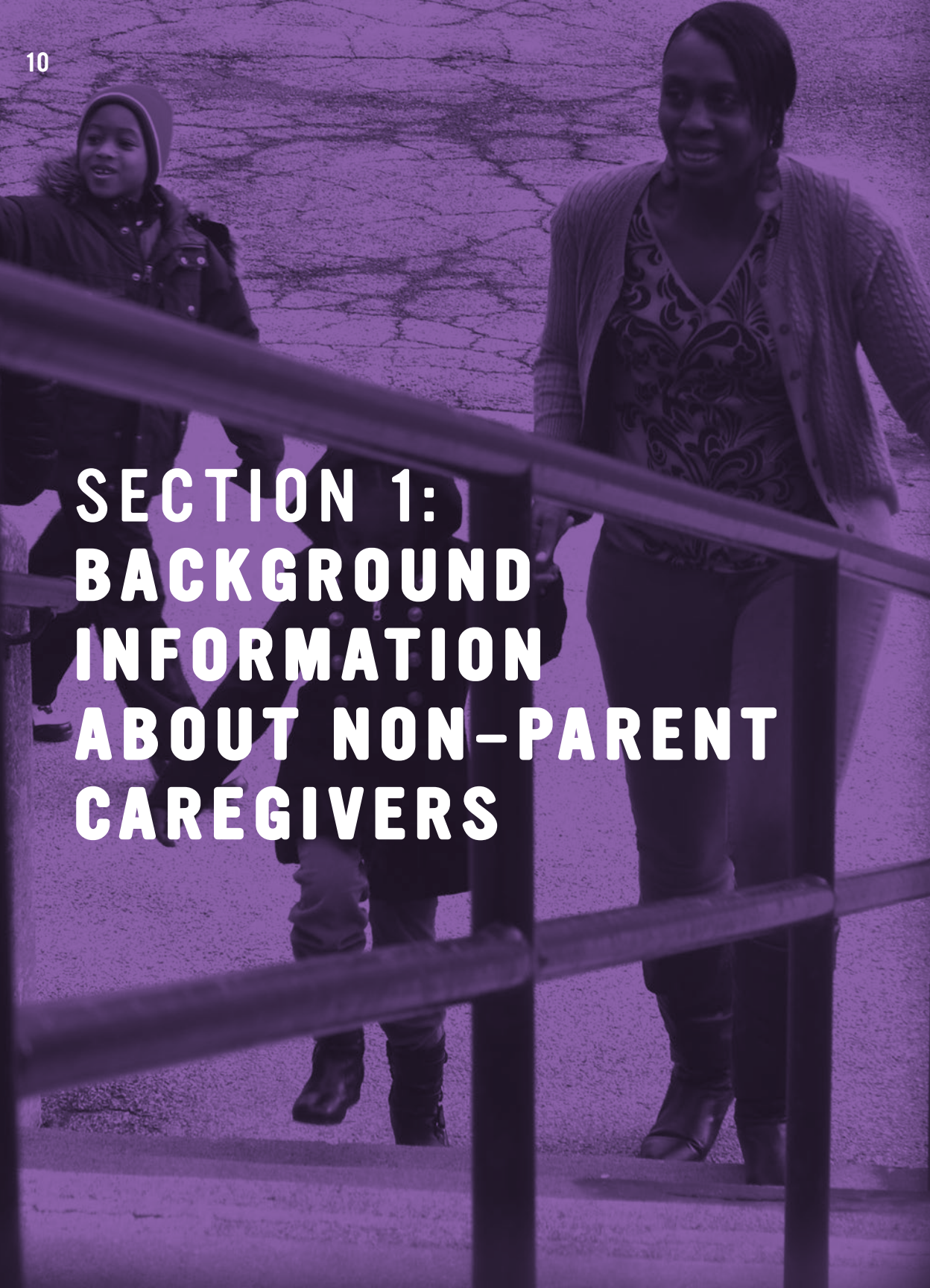
The incarceration of a parent creates many well-documented challenges for children and families. This handbook will focus on the complex situations of non-parent caregivers who, in many cases, were not expecting to be full-time providers for minor children, and who face myriad challenges in terms of custody, legal guardianship, finances, children's health and education, and more. This handbook differs slightly from the previous two in that it is designed as a reference guide for non-parent caregivers of children of incarcerated parents. It does not delve into the emotional and psychological challenges that caregivers face, which are very important to acknowledge and address, but focuses on concrete needs and information. Additionally, the handbook does not focus on caregivers who are the child's other parent, which is the majority of cases when a father is incarcerated. We salute caregivers, acknowledge their challenges, and hope they find support within all of the *Stronger Together* volumes.

Given the stigma attached to incarceration and how difficult it may be to ask for assistance, this handbook aims to provide important—sometimes hard-to-find—information about the services, resources, benefits, and support available to assist caregivers in providing for the needs of the children in their care. We also provide information on the various laws, regulations, policies, and programs that do exist, but are not always user-friendly. The legal information and legal citations are current as of January 2012. This handbook does not provide legal advice. More specific questions or concerns about legal matters should be directed to an attorney.

10 TIPS FOR ALL CAREGIVERS

By Dee Ann Newell, MA, Executive Director and Founder Arkansas Voices for the Children Left Behind, Inc. Copyright 2011. Permission is required to copy. Contact Dee Ann Newell at deeann@arkansasvoices.org.

- 1 Recognize that the children have probably endured multiple traumas and may have behaviors that are reactive to these**, including withdrawal, anxiety, isolation, or aggressive and unpredictable behaviors.
- 2 Keep the communication door open with the children.** Proactively let them know you are accepting of their feelings and to feel safe expressing them to you in words. You have to tell them this, even when you think that they should know this.
- 3 Recognize your own ambivalence toward the incarcerated parent** can bewilder the child, who, in turn feels conflicted in loyalties and may shut down their sharing with you.
- 4 Realize that there is often grieving and mourning in the worlds of these children**, and rituals and symbols help to comfort the children.
- 5 Tell them stories about yourself as a child**, allowing you to share some of the times when you were conflicted and were successful in working out your conflicts, both internal and with others.
- 6 When seeking counseling for the child in your care, and many need the professional help of mental health providers, be sure that the therapist has experience and compassion for children of incarcerated parents.** Some of the typical prejudice in our society regarding incarcerated parents also exists with professionals who have not been trained in the research and understanding of these children.
- 7 If there has been a relationship with the parent in prison, and there has been no violence perpetrated against the child by the parent, permit the children to visit and receive letters and phone calls**, with economics determining the frequency due to the high cost of prison calls. This is so important if the parent will be returning during the childhood of the child, as sustaining the relationship is critical to the well-being of the children. However, children of parents with longer sentences also need to maintain contact and **the sentence length should not determine if there is a relationship.**
- 8 Never force children to visit their parent**, but if they wish to, be sure to prepare them for the visit, the security protocols, the dress code, long waits, the presence of guards, and the change in appearance of their parent.
- 9 Know the visiting rules and teach them to the children.**
- 10 Always tell the child the truth about the incarceration of the parent.** Deception will only create more fear.



**SECTION 1:
BACKGROUND
INFORMATION
ABOUT NON-PARENT
CAREGIVERS**

To best understand and utilize the information provided, it is first necessary to become familiar with some of the basic terms and information about non-parent caregivers, who we will refer to as **kinship caregivers** from here forward.

WHO IS A KINSHIP CAREGIVER

“Kinship caregiver” refers to someone who provides full-time care for a child in his/her home and who is related to that child by blood (such as grandparents, aunts, uncles, or other relatives) or by marriage (such as step-grandparents), or who knows the child well (such as close family friends). A foster parent who is a stranger to the child is not a kinship caregiver. However, in some instances kinship caregivers can become foster parents and then are referred to as “relative foster parents” or “kinship foster parents.” The majority of kinship caregivers are caring for children *outside* of the foster care system in what are called informal or private kinship care arrangements (also known as kincare and non-foster kinship care). When kinship caregivers become foster parents, this is a public arrangement and is also known as formal kinship or kinship foster care. In this handbook, we will refer to “kinship caregivers” when the information is relevant to both kinship caregivers in and outside of the foster care system; when we need to distinguish, “kinship foster parents” will be used for those who are in the public/foster care system.

STRENGTH IN NUMBERS: STATISTICS ON KINSHIP CARE

Although there are very few statistics on kinship caregivers specifically caring for children with incarcerated parents, overall New York State has a large number of kinship caregivers. In 2002, there were 186,435 non-parent custodial arrangements for New York’s children.¹ More recently, the Annie E. Casey Foundation reports over 150,000 children are living with non-parents in New York State.² The majority of these involve grandparents. More than 55,000 children in New York State live with a grandparent for more than five years.³

1 Safir, A. & Leibovitz, H. (2002). *State Profile of New York, 2002 National Survey of America’s Families* (Urban Institute).

2 The Annie E. Casey Foundation, Policy Report Kids Count (2012). *Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families*.

3 U.S. Census indicates over 412,000 grandparents resided with their grandchildren in 2000. See U.S. Bureau of the Census (2000).

The 2009 American Community Survey revealed 141,157 New York grandparents as primary caregivers and provided this snapshot:

- 38% of the grandparents were age sixty or older.
- 46% are Caucasian, 29.4% African-American, and 27.7% Hispanic.
- 22% of these caregivers had an income below the poverty level.
- 48.9% of the children in their care were under six years of age.
- 30% of the children in their care were from six to eleven years old.
- 22% of the children were from twelve to seventeen years old.⁴

According to a report by the Osborne Association, roughly 105,000 children in New York State have parents who are incarcerated.⁵ Most of these children live with parents who are not incarcerated and with their mothers. But when mothers are incarcerated, roughly 67% of their children reside in kinship care, mostly with the children's grandmothers.

According to the New York State Kinship Navigator, in a sampling of over 1,000 kinship families, almost 10% reported caring for children with incarcerated parents.⁶

PARENTAL INCARCERATION AND KINSHIP CARE

Parental incarceration separates millions of parents and children in the United States. As a form of parent-child separation, incarceration presents unique struggles for children and their families; **caregivers are strongly encouraged to read *Stronger Together, Volumes I and II* for a detailed discussion, support and tips on all of the issues mentioned briefly here.**

The stigma and invisibility that accompanies parent-child separation due to parental incarceration can weigh heavily on children and families, and hinder families from seeking the services and support they may need. For kinship caregivers, there are many special challenges, including

4 http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff17.html

5 Krupat, T., Gaynes, E., and Lincroft, Y. (2011) *A Call to Action: Safeguarding New York's Children of Incarcerated Parents*. New York, NY: New York Initiative for Children of Incarcerated Parents, The Osborne Association.

6 New York State Kinship Coalition. (2011). *Kinship Care in New York: Keeping Families Together*.

children's emotional, psychological, and developmental needs and behavioral reactions to a parent's incarceration. There are also significant obstacles to maintaining the parent-child relationship, such as the financial costs of collect phone calls and arranging visits at prisons that are hundreds of miles away.

The period of incarceration during which caregivers assume full responsibility for the children can last from a few days or months to more than 18 or even 21 years (an entire childhood). The challenges during any period can be overwhelming, and since families often struggle to deal with these on their own, even with the best intentions, decisions are not always informed by what children need or by strategies others have found to be effective. Protecting children from the truth by lying to them about the parent's incarceration or the length of the parent's sentence, for example, is a choice some caregivers make, although it usually backfires and/or makes the situation worse (when children find out the truth, which they usually do).

Although the day the parent comes home can often be looked to as the day the challenging times end, this is far from the case. Reentry brings its own significant stresses, with caregivers also having to address the children's many feelings about the parent's return home, such as excitement, hope, expectations, fear, resentment, anger and more, as well as their own feelings about this. Since there is little preparation offered to families prior to reentry, there may have been no communication about each party's expectations and upon reentry, tension and misunderstandings can occur. In many cases, a parent comes home and hopes to assume or resume his role within the family, which can upset family stability. Friction between children and their parents can occur at this time, as well as between the caregiver and parent. Sometimes reentry goes smoothly with the parent reintegrating in a way that adds to the support children and caregivers experience with minimal disruption, but often this can be a very stressful time (especially with parents returning after serving long sentences).

This only scratches the surface of the challenges faced by caregivers; for more information, please see Volumes I and II.

A photograph of a woman and two children walking down a set of stairs. The woman is on the right, wearing a patterned top and a cardigan. Two children are on the left, wearing winter coats and hats. A metal railing is in the foreground. The entire image has a purple tint.

**SECTION 2:
HOW KIN BECOME
CAREGIVERS**

PATHWAYS TO KINSHIP CARE

Separation of children and their parents is a painful experience that has a profound impact on the wellbeing of children and families.

Children whose parents are incarcerated may enter kinship care as a result of their parent's arrest and incarceration, or they may have been in kinship care already at the time of their parent's arrest or incarceration. In some instances, they enter kinship care during a parent's incarceration when the other parent or guardian, for a variety of reasons, can no longer provide primary care for the children. Factors that lead to or contribute to children being cared for by kinship caregivers in addition to a parent's incarceration include:

- Substance abuse and/ or mental illness
- Illness
- Military deployment
- Work-related separation
- Abuse, neglect or abandonment
- Death

All of these forms of parental loss are complicated and significant—if not traumatic—for children, posing significant challenges to the caregiver(s) who steps in.

When decisions are made about children's living and care arrangements, wherever possible and appropriate, the incarcerated parent should be involved and included in these. Unless a Court has ordered otherwise, or the parent has surrendered her parental rights, incarcerated parents retain their parental rights and many were significantly involved in their children's lives and contributed to their wellbeing prior to their incarceration. The incarcerated parent can be a great asset in this decision-making process and also key to its success. The parent who is incarcerated may also have knowledge of relatives or potential caregivers, or other relevant factors that no one else has. No matter what the arrangement decided upon, it is always in children's best interest for there to be a positive, at least cordial, co-parenting relationship between the kinship caregiver who assumes responsibility for the children and the incarcerated parent.

KEEPING TRACK OF EVERYTHING

Excerpted from OCFS (2009), *Having a Voice and a Choice*, p.6.*

Even before a child comes to live with you, it is important to start thinking about how to keep track of documents like court papers and medical records. Choose whatever system works best for you: a large binder, a small file cabinet, or a storage box with file folders. Important documents include:

- Court orders and placement documents
- Child's birth certificate
- Parental designation form
- Medical consent form
- Medical records (appointments, prescriptions, immunizations, etc.)
- School records
- Benefit/payment records
- Insurance records
- Social Security information

Keeping track of contact names and phone numbers is also very important. It is a good idea to make a card with contact information and keep it with you at all times. This should include the child's medical provider, caseworker, relatives, babysitters, service providers, your emergency back-up for the children, and others. Finally, keep track of upcoming appointments and meetings by using a calendar (paper or electronic).

WHEN PARENTS AGREE/CONSENT

When parents are in agreement with the plan determined to be in the children’s best interest and consent to it, grandparents, relatives and other kin should not face barriers to becoming caregivers. In circumstances when parents are incarcerated, they may be willing to consent to a family member caring for the child. An incarcerated parent can sign a “Parental Designation” form or inform a court of his consent to the custodial arrangement. OCFS provides a sample Designation of Person in Parental Relationship form on their website at <http://www.ocfs.state.ny.us/main/Forms/kinship/OCFS-4940%20Designation%20of%20Person%20in%20Parental%20Relationship.pdf>.

The New York State Permanent Judicial Commission on Justice for Children has created a pamphlet for parents at the time of an arrest (but useful during incarceration or another period of separation as well) explaining how to designate custody and decision-making ability for children for up to 30 days or for 6 months or less. A summary of the pamphlet which is offered in some precincts, courthouses, and jails is reprinted in **Appendix A**—and the designation forms are also offered here as **Appendix B** (30 days and less) and **Appendix C** (up to 6 months).

WHEN PARENTS WILL NOT OR CANNOT CONSENT

If parents are unwilling to consent, the caregiver will have to petition Family Court via a guardianship or custody petition. The petitioner will have to prove an “extraordinary circumstance” at a fact-finding hearing. Extraordinary circumstances refer to situations where parents are unfit or unable to care for children. They include abuse, neglect, abandonment, mental illness, incarceration, an extended disruption of custody, and other unfortunate circumstances.⁷ Once the court finds that extraordinary circumstances exist, then the court must hold a trial and decide custody based on the best interests of the child.⁸

- 7 An extended disruption of custody is when a child had lived with the caregiver for an extended period of time. Courts have found periods as short as six months to be long enough. Importantly, courts consistently find that an extended disruption of custody—when accompanied by evidence that the non-parent had a close relationship with the children and the parent failed to make efforts to resume her parental role—is an extraordinary circumstance. See *Matter of McDevitt v. Stimpson*, 281 A.D.2d 860, 862 (2001); *Cote v. Brown*, 299 A.D.2d 876, 2002.
- 8 Trials involving a parent and a non-parent caregiver happen frequently, and there is a large number of cases that supply precedents for these proceedings. Of these, the most important is *Bennett v. Jeffreys*, 40 N.Y.2d 543 (1976).

PAUL

Paul is the custodial parent of his two children. Their mother passed away two years ago. He was arrested on an outstanding warrant from when he was 19 (he is now 26 years old) which showed up when he went to register for college. Paul's life was turned upside down, but luckily his aunt agreed to care for his children while he served about 6 months in jail. When Paul was waiting to be seen by the judge, he found a pamphlet in the court pens area that was called, *Be Sure Your Child is Cared For and Safe*. In it there was a "Parental Appointment of Your Child's Caregiver for 6 Months or Less" form. Paul signed the form and gave it to his aunt in the courtroom so that she could make medical and educational decisions about the children while he was in jail. The pamphlet also listed organizations that could support her and the children. Paul was particularly worried about his children since they were now losing their only parent, and he didn't want them to feel abandoned or alone.

A NOTE ABOUT CHILD WELFARE AGENCIES

Throughout this handbook, we refer to situations where there has been an investigation by a child welfare agency that can lead to a child being removed from his home and, in some instances, placed in foster care. Here are some definitions that are important to know:

Child Protective Services (CPS) is the division within a child welfare agency that receives and investigates reports of child abuse, neglect, or maltreatment in their jurisdiction. Every county of New York State has its own CPS unit(s), which is a part of the local Department of Social Services (DSS)/local child welfare agency. In New York City, CPS is part of the Administration for Children Services (ACS). CPS also assesses children's needs and provides information to parents about the types of services available and where to find them.

Department of Social Services (DSS) is the social services agency in each county that provides a range of publicly funded social services and cash assistance programs to assist children and families in reaching self-sufficiency. In most counties, the child welfare agency is part of the local DSS; in New York City, DSS is also known as the Human Resources Administration (HRA), and ACS (the child welfare agency) is NOT part of HRA (it has been a separate agency in NYC since 1996).

Administration for Children Services (ACS) is the local child welfare agency in New York City.

Office of Children and Family Services (OCFS) is the state agency that provides a system of family support, juvenile justice, child care and child welfare services that promote the safety and wellbeing of children and adults. OCFS is responsible for programs and services involving foster care, adoption and adoption assistance, child protective services including operating the Statewide Central Registry for Child Abuse and Maltreatment, preventive services for children and families, services for pregnant adolescents, and protective programs for vulnerable adults.

To avoid confusion within this handbook, we will refer to the local DSS and ACS as “the local child welfare agency” from here forward.

Grandparents also have a special statute about extraordinary circumstances. This law states that an extended disruption of custody for twenty-four months or more is considered to be extraordinary circumstances in a custodial contest with an “absent” parent.⁹ Parental incarceration is considered an “extraordinary circumstance” because the parent is unable to care for the child.

WHEN RELATIVES ARE REQUESTED TO ASSIST BY CHILD PROTECTIVE SERVICES OR BY THE POLICE—BEFORE REMOVAL

Often grandparents and relatives are contacted by Child Protective Services (CPS) or a law enforcement official and asked to care for children. In these cases, there is no formal legal proceeding to remove the child. Such requests are legally valid. However, once the relative agrees and takes a child into his home, he may not be offered information about becoming a foster parent, or taking direct custody of a child through court ordered removal. Information and potential benefits of becoming a foster parent or direct custodian are discussed in **Section 3**.

WHEN RELATIVES ARE REQUESTED TO ASSIST BY CHILD PROTECTIVE SERVICES OR BY THE POLICE—AFTER REMOVAL

Once a child is removed from a parent’s home by CPS, the Family Court Act, Article Ten, Section 1017 requires that the local child welfare agency must identify, search for and provide required notification to all relatives, including grandparents, and offer them the opportunity to become foster parents or take direct custody of the child.

In response to the federal Fostering Connections to Success and Improving Adoptions Act,¹⁰ local child welfare agencies must act with “due diligence” and complete the search for relatives, including all grandparents, within thirty days. Additionally, the local child welfare agency must provide each contacted relative with two booklets as mandated by the Office of Children and Family Services (OCFS), the state agency that oversees all the local county child welfare agencies in New York:

- 9 In *Bennett*, the New York State Court of Appeals expanded the circumstances whereupon a trial court must decide custody based upon the best interests of children. The Court’s decision specifically added a new circumstance: “an extended disruption of custody.” Since then, numerous courts have decided such circumstances exist. See *Matter of Gray v. Chambers*, 222 A.D.2d 753 (1995).
- 10 See Fostering Connections to Success and Improving Adoptions Act (P.L. 1010-351, Oct. 2008).

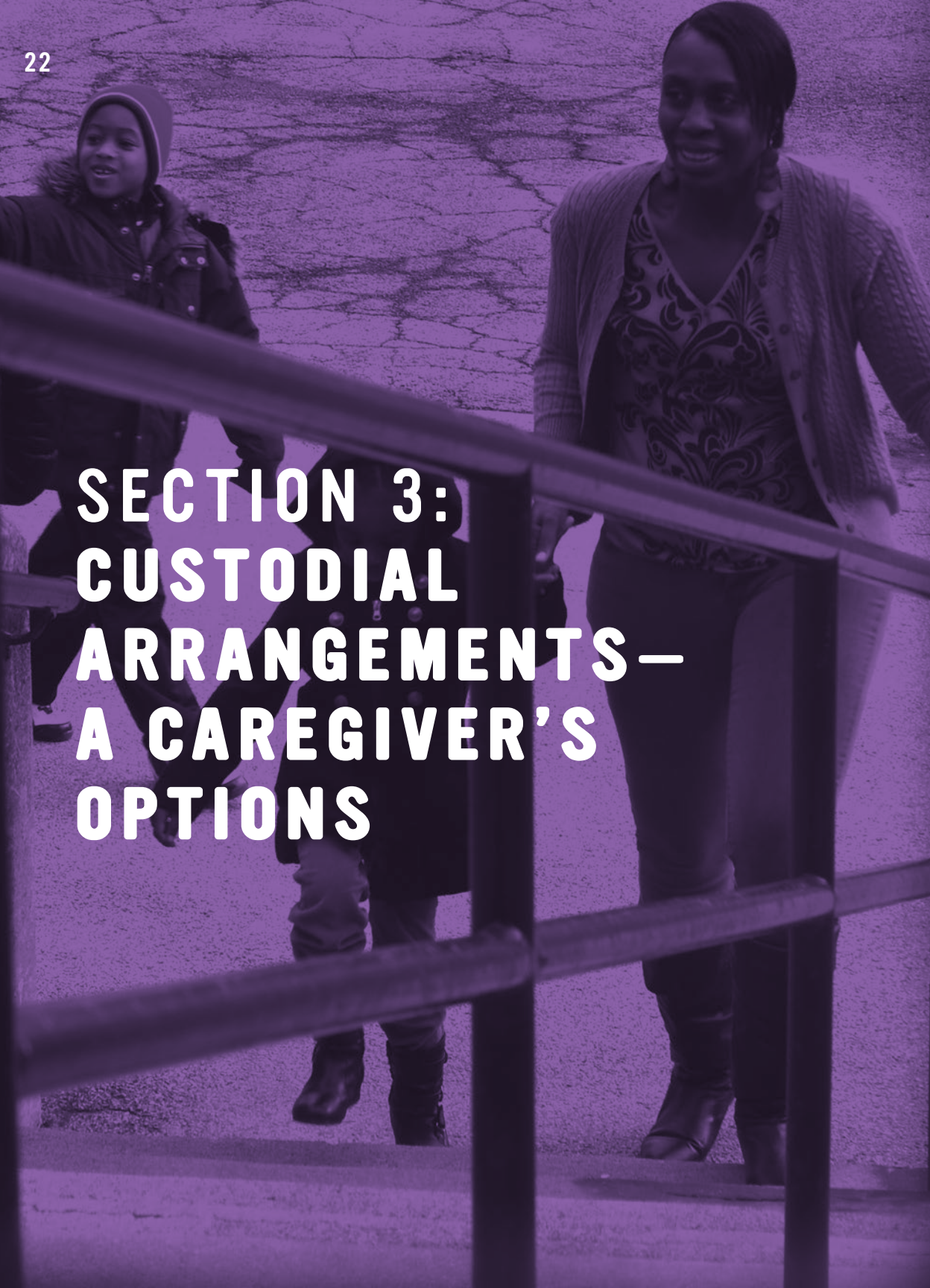
21 HOW KIN BECOME CAREGIVERS

“OCFS requires that relatives be given a copy of *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children*, if the relative is considering becoming the child’s caregiver. OCFS also developed a brochure *Know Your Options: Relatives Caring for Children*. A new publication, entitled *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* must accompany the handbook *Having a Voice and a Choice* in situations where the handbook is required.”¹¹

This is a very important legal requirement. Caregivers who are not given the booklets should contact the caseworker and the New York State Kinship Navigator (www.nysnavigator.org or 1-877-4KinInfo/1-877-454-6463). They may still be eligible to become foster parents. Links to the above publications can be found on the OCFS website at www.ocfs.state.ny.us and the Kinship Navigator website.

If there is involvement by CPS and children must be placed outside their home, the local child welfare agency is required to search for relatives, and to give the relatives two booklets: *Having a Voice and a Choice* and *Know Your Options: Relatives Caring for Children*. A new publication, *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*, must accompany *Having a Voice and A Choice*. These booklets explain the different options available to relatives who become primary caregivers for children.

11 See OCFS’s Administrative Directives 09-OCFS-ADM-04 & 11-OCFS-ADM-03 for further information.

A photograph of a woman and a child walking down a set of stairs. The woman is on the right, wearing a patterned top and a cardigan, and the child is on the left, wearing a dark jacket and a hood. They are both smiling and looking towards the camera. The stairs have a metal railing. The entire image is overlaid with a purple tint.

**SECTION 3:
CUSTODIAL
ARRANGEMENTS—
A CAREGIVER'S
OPTIONS**

In New York State there are several custodial options for kinship caregivers who find themselves raising children. Grandparents, relatives, and close family friends can become the lawful caregivers of children in 6 different ways (some are temporary; others are legally permanent), each of which is discussed in detail below:

1. Informal care/custody
2. Legal custody
3. Guardianship (regular or permanent)
4. Direct placement
5. Foster care
6. Adoption

INFORMAL CARE/CUSTODY

Informal care/custody does not involve a court petition, court hearings, or court orders. It is privately arranged between parents and caregivers. Informal custody can happen when parents are not able or willing to care for their children, including when a parent is incarcerated. Informal caregivers have limited authority to make decisions for children so this arrangement is best in short-term situations. In general, most informal custodians fit the definition of a “person in parental relationship,” and as such, can consent to the child receiving immunizations and make educational decisions. If caregivers have a written designation form from the parent, they may have authority to make other medical decisions. Informal caregivers who have a written “designation” form from a parent or guardian have responsibility for immunization and school attendance.¹² Additionally, another law permits any grandparent, adult brother or sister, adult aunt or uncle who has assumed care to consent to immunizations (Public Health Law 2504(5)).

12 See PHL 2164, 2504, EDL 02 & 3212 for “persons in parental relationship” and General Obligations Law 5-1551 for parental designations.

FRANK

Frank is a paternal uncle and now the primary caregiver of his 8-year-old niece. Frank's brother and his wife were arrested on drug charges and asked Frank to care for the child while they were incarcerated. Frank is informally caring for his niece; thus, he does not have court ordered custody. Frank is concerned about his niece's medical needs. She needs glasses and he does not have the authority to take her to the doctor. He also does not have medical coverage for her. Frank would need his niece's parents to complete a "Parental Designation" form which would grant Frank temporary authority/designation over the child for education and medical purposes. Frank plans to have the form filled out and notarized when he visits his brother in jail. Frank called the New York State Kinship Navigator and also found out that he can apply for a child-only (NPC) grant, which would include Medicaid for his niece. Frank will be applying for both at his local child welfare agency office in Herkimer County. He has also connected with the local OCFS program "Kin and Kids" to help expedite the application so that he can obtain glasses for his niece.

WRITTEN DESIGNATIONS BY PARENTS

In New York State there is state law that permits parents to designate someone other than themselves to serve as a “person in parental relation,” which means they are authorized to make similar parental decisions, including consenting to general health care decisions. Informal caregivers who have such a written designation from the parent can consent to certain medical, dental, health and hospital services, such as immunizations, teeth cleanings, and emergency care services.

No informal caregiver—even if the caregiver has been designated a “person in parental relationship” to a child—has the right to consent to major surgery or other major medical treatment. Major medical treatment in this case means surgical or diagnostic interventions or procedures where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period.

For more information about “persons in parental relationship,” consult an attorney, or see the New York State Kinship Navigator website’s legal fact sheets.

Parents have a legal right to care for their children. They can consent to informal care, and they can revoke their consent at any time. Upon revocation, an informal caregiver will have no right to continue caring for the child unless she can obtain the assistance of a court or of Child Protective Services (CPS).

IMPORTANT FACT ABOUT EMERGENCY AND MEDICAL CARE:

Public Health Law 2504(4) makes sure that children can receive medical care in an emergency. There is no requirement that someone be a “custodian,” a “person in parental relationship” or have legal orders of custody or guardianship. Anyone can help a child to get care when it is an emergency.

While the Public Health law specifies who can make medical decisions, the reality is that often medical providers accept the authority of grandparents and other relative caregivers, and do not generally inquire about court orders or parental designations. Sometimes, a statement from the caregiver or the parent, or from a social worker—which explains your relationship to the child—is enough to get medical care for a child. However, it is better to have the proper designation forms in place before you need them.

WHAT FINANCIAL ASSISTANCE AND SERVICES DO INFORMAL CUSTODIANS QUALIFY FOR?

All informal caregivers who have assumed the care and custody of children who are living with them are eligible for financial assistance and other services. See **Section 5** and **Section 6**.

Laws regarding access to birth certificates, medical records, school records, court records, and other documents are all different (they vary depending upon location, local practice, and applicable laws). Check with the local child welfare agency, an attorney, the OCFS website and materials, or call or visit the New York State Kinship Navigator for more information.

SCHOOL ENROLLMENT

In order to enroll a child in school, caregivers can seek one of the court ordered custodial arrangements or remain an informal caregiver and attempt to prove to the local school district that they have met the educational requirements to enroll the child in a school. Education law requires that the informal custodian has taken on the care and control of a child and the child is living with them with the intention to remain there for the foreseeable future.

Informal caregivers must talk to the local school officials and prove these two requirements via sworn statements and other documentation showing that the parents are unable or unwilling to care for their children and that the children are residing with the informal caregiver.¹³

Schools may demand proof of legal custody or guardianship in order to show that you have assumed the care and control of a child, even though this is not what the law states. Instead, school districts should ask for an affidavit (a sworn notarized statement) stating that you are

13 See DRL 74 and FCA 657.

the child's caregiver and the reason you are caring for this child. They may also ask for an affidavit from the parent attesting to the fact that you have assumed the full care and control of a child. Schools may also request documents that prove where the caregiver and child live. Suitable documentation includes a utility bill, driver's license, medical insurance card, a letter from the local child welfare agency, etc.

Also, a recent law mandates that local school districts must accept custody or guardianship orders as conclusive proof of residency and control, but this does not mean that only custody or guardianship permit enrollment. Some school districts will reject school enrollment applications. Caregivers must then ask for a fair hearing by the state education department. This process can take a long time (months, not years) and local districts can refuse to permit children to attend school during the appeal.

School administrators are not always aware that legal custody or guardianship of the child is not required in order for you to enroll a child in school. If you are turned away, you can return to the school with proof of residency and proof of your assumption of parenting duties. You can also call the New York State Kinship Navigator for assistance.

LEGAL CUSTODY

Legal custody is a legal arrangement that must be ordered by a Family Court Judge (Article 6 of the Family Court Act outlines both custody and guardianship). This option may be chosen by an incarcerated parent and/or caregiver when it is desired that the caregiver have clear legal authority to care for the child. It is possible that a Judge places limitations or conditions upon the caregiver's authority or awards joint custody with a parent (not possible when the parent is incarcerated, however). Since this decision is made through the court, a parent who wants to resume full-time care of his children (upon reentry from prison, for example) would have to go to court before regaining custody.

JUANITA

Juanita is a paternal aunt raising her twin nephews. Her brother has been incarcerated for the past 3 years and the twins are now 5 years old. The mother is out of state and cannot be reached. Juanita is an informal caregiver for the children. She now needs to enroll them into school. The school will not allow Juanita to enroll the children without an affidavit or sworn statement. Juanita tried to get an affidavit from her brother who is incarcerated. Unfortunately she was unable to get her brother's affidavit. However, Juanita was able to complete an affidavit she found on the New York State Kinship Navigator website. The affidavit states she is the informal caregiver and that the children reside with her full time and that she is responsible for their care. Luckily, the school accepted the affidavit and she was able to enroll the twins, although they did miss the first month of school by the time all of this was cleared up.

Non-parent caregivers who want legal custody must obtain the parents' consent or go to court and prove to the judge that the parents are not able to care for the child. When parents are incarcerated, it is possible to request that the court issue an "Order to Produce" so that the parent can be physically brought to court to consent. If this is not possible or desirable, a parent can also provide written, notarized consent (there are notaries in every prison and jail).

If the parents do not agree to consent, then it will be necessary for the caregiver to prove "extraordinary circumstances" that make it necessary for the court to decide what placement is in the child's best interest. "Extraordinary circumstances" is the legal term. "Extraordinary circumstances" refer to situations where parents are unfit or unable to care for children. They include abuse, neglect, abandonment, mental illness, incarceration, an extended disruption of custody, and other unfortunate circumstances. Parental incarceration and the parent's subsequent inability to provide and care for the child should be considered an extraordinary circumstance. In many cases, incarcerated parents consent to the caregiver gaining legal custody so it is not necessary to prove extraordinary circumstances.

If court proceedings do go forward, in almost all cases the parents will have the right to a lawyer and a lawyer will also be appointed to represent the child. Formerly known as "law guardians," these attorneys are now called "attorneys for the child."

Once legal custody has been granted, if parents want to regain custody (after reentry in the community) and the legal custodian does not agree, they will need to go to court and revoke (take back) their consent. The judge will not hold a trial to decide custody. The judge may order a home study or other investigations before returning custody to the parent. However, if the caregiver then claims an extraordinary circumstance, like an extended disruption of custody due to incarceration or other factors, then the judge will hold a hearing to decide if such a circumstance exists. If the judge finds extraordinary circumstances do exist, he will hold a trial to decide whose custody is in the best interests of the child.

When caregivers and parents do not agree about the living and custody arrangements that are in the children's best interests, it is very important to focus on the children and their needs, and to put adult feelings, past hurt and conflict aside. Court battles over custody of the children can be very upsetting for children. Repairing relationships among the important

adults in children’s lives in order to reach an agreement that has their wellbeing in mind is always in children’s best interest. This said, caregivers who believe the returning parent’s desire to regain custody of her children is not in the children’s best interest should seek the advice of a legal services agency or an experienced attorney.

Petitions for legal custody can be obtained from the local Family Court or from the official website of the New York State Office of Court Administration.¹⁴

Information about education and health decisions that legal custodians can make, as well as financial assistance available is discussed below in the Guardianship section.

It is important to note that if an incarcerated parent’s rights have been terminated, petitioning for custody will usually not be granted. At this point, children need new legal parents (via adoption) or guardians (who act as parents). Therefore, if parental rights are terminated, it is better to petition for adoption or guardianship.

GUARDIANSHIP AND PERMANENT GUARDIANSHIP

Guardianship is a legal arrangement granted to a non-parent by either the Family Court or a Surrogate’s Court.¹⁵ While both Family Court and Surrogate’s Court may appoint a guardian, some counties prefer to hear petitions for guardianship of the child by family members in Family Court.

Guardianship provides legal authority similar to designation of parental authority. In New York State, there are two types of guardianship: 1) guardianship of the person, where the guardian has the legal authority to make all daily decisions concerning a child including her education, medical care, and where she will live; or 2) guardianship of the property, whereby the guardian is placed in charge of a child’s property and finances.

There is also a special form of guardianship called “permanent guardianship,” available when parents are deceased or their parental rights have been terminated. Permanent guardianship is similar to adoption in the sense that it can be forever. In both cases, a child’s name does not have

14 For a copy of the petition for legal custody form, go to <http://www.nycourts.gov/forms/familycourt/pdfs/gf-17.pdf>.

15 The Surrogate’s Court hears cases involving the affairs of decedents, including the probate of wills and the administration of estates. It also handles adoptions.

to be changed (though with adoption is usually is). However, with permanent guardianship—unlike adoption—the guardian does not become or replace the parent. The main difference between guardianship and permanent guardianship is that the permanent guardian can consent to the child's adoption.

In practice, guardianship and legal custody are mostly the same. Below some similarities and differences are explained.

SIMILARITIES BETWEEN GUARDIANSHIP AND LEGAL CUSTODY

- Generally speaking, judges follow the same standards of review for both guardianship of the person (child) and legal custody. To make their decision about what is best for a child, judges may choose to interview children in their court chambers. This interview—called an in-camera interview or a Lincoln hearing—may occur without the consent of parents.¹⁶
- For both guardians and legal custodians, the responsibility and rights of the parent remain. Parents are still responsible for the financial support of the child.
- If the guardianship is established through the Kinship Guardianship Assistance Program (KinGAP, see p. 43), then the guardian receives an assistance payment to care for the child and can pursue child support from the parent.
- Parents retain their rights to visit with their children (unless a court has ordered otherwise) though, while incarcerated, they are dependent on someone to bring their children to them. Kinship caregivers caring for children as guardians or legal custodians can often enhance the wellbeing of children in their care by facilitating visits and co-parenting with the incarcerated parent. See **Volume II, Section 2**, “Supporting Positive Visiting Experiences for Children.”
- In both guardianship and legal custody, the parent retains the right to petition the court to regain custody of his children, as long as his parental rights have not been terminated.
- A few statutes state that guardians and legal custodians have the same authority. DRL 74 and FCA 657 state that both guardians and legal custodians can enroll children in school and can place children

¹⁶ See *Lincoln v. Lincoln*, 24 N.Y.2d 270 (1969).

on a caregiver's health insurance. The standby guardianship statute, discussed below, also includes both guardians and legal custodians.

DIFFERENCES BETWEEN GUARDIANSHIP AND LEGAL CUSTODY

- Legal guardians have full authority to apply for government records and documents related to the child; legal custodians do not.
- Parents and guardians always have the authority to make major medical decisions, but legal custodians may not have their authority accepted by some medical providers. While usually no one questions the authority of legal custodians, it is best if the court order for legal custody expressly grants such authority.
- An order granting guardianship of the child requires a check of the Statewide Central Register of Child Abuse and Maltreatment (SCR) for all people age 18 or older living in your home. A criminal record check may be conducted by the county Probation Department, if ordered by a judge.
- Guardians can sign a voluntary placement agreement if they need or wish to place a child in foster care.¹⁷
- Custody ends when the child reaches age 18; guardianship can last until the child reaches 21 with the consent of the child.

STANDBY GUARDIANSHIP

Standby Guardians are persons who can step in to become the guardians of children when parents, guardians, legal custodians, and caregivers become debilitated, incapacitated, or die. The Standby Guardianship statute has two very different ways to name a future guardian:¹⁸

Option One: If the principal (parent, guardian, legal custodian or other authorized informal caregiver) is progressively chronically ill or dying, she can go to court with the person chosen to be the future guardian and apply for a nomination of a "standby guardian." Upon the principal's incapacity or death, the nominated standby guardian becomes the active guardian, but must go to court within ninety days to apply for confirmation of the permanent appointment.

17 These last two differences are excerpted from *Having a Voice and a Choice*, p.16.

18 Surrogate's Court Procedure Act, Section 1726.

33 CUSTODIAL ARRANGEMENTS—A CAREGIVER'S OPTIONS

When the principal (parent, guardian, legal custodian or other authorized informal caregiver) goes to court to have the standby guardian nominated by the court, she does not give up her current right to make decisions for the child.

Option Two: The principal (parent, guardian, legal custodian or other authorized informal caregiver) can name a standby guardian by writing and signing a one page document (similar to a will) in front of two witnesses who are at least 18 years old. The document should include all of the following:

- the principal's name;
- the name, address, and telephone number of the proposed standby guardian;
- whether the authority of the standby guardian will be to make decisions for the daily needs of the child, the child's finances and property, or both; and,
- whether the authority or the power of the standby guardian should begin when the principal becomes debilitated, incapacitated, or dies.

When a principal designates a standby guardian in writing, she is recommending a person to the court to be the child's guardian in the future. Upon the principal's debilitation, incapacity, or death, the standby guardian named via writing must go to court within sixty days and apply for permanent appointment. The standby guardian designation form is available at the New York State Kinship Navigator website.¹⁹

Both options require the standby guardian to apply to court for a permanent appointment (nominees within ninety days, designees within sixty days) following the occurrence of the event that activated the guardianship, or their temporary power to act as guardian ceases. When such an application is made, the judge must find that the permanent appointment of the standby guardian is in the best interest of the child.

Parents who are incarcerated will be notified of and given standing to appear at any court proceeding to establish a standby guardian for their children. The court would have to issue an Order to Produce in order for the parent to attend such a court hearing. Incarcerated parents can also

¹⁹ See <http://www.nysnavigator.org/> for a copy of the standby guardian designation form.

designate their own standby guardians—someone who will care for the children if they become debilitated, incapacitated, or die. The standby guardian could be the caregiver who is currently caring for the children. If an incarcerated parent designates a standby guardian who is not the person currently caring for her child, then this standby guardian would need to challenge the current caregiver in a court proceeding. Note that should the incarcerated parent become debilitated, incapacitated, or die, at that time, the court will consider keeping the child with the current caregiver, as it is likely in the best interest of the child.

The remaining three caregiving options discussed all occur **after there has been a removal** by Child Protective Services (CPS).

DIRECT PLACEMENT

Direct placement may occur after there has been a Child Protective Services (CPS) removal and there is a child abuse and neglect proceeding in Family Court. The local child welfare agency has legal custody upon removal until there is a court hearing during which a decision is made by the judge from among several options. These options include:

- awarding care and custody to the local commissioner who may place the child in a foster boarding home or other foster care facility. If placement is in a foster boarding home, the preferred option, where feasible, is to place child with a relative foster parent. The relative must be certified or approved to care for the child as a foster child (see p. 35); or
- placing the child in the direct temporary custody (often referred to as **direct placement**) of a relative or other suitable person, with supervision by the child welfare agency.

The child's parents may consent to transferring custody to the caregiver or, if they oppose this, they can go to court to try and prevent the transfer of custody. Generally, the court will order the local child welfare agency to supervise the child's placement with the caregiver. The court may also issue orders specific to visiting between the child and parent, specifying the frequency or limiting contact depending on the circumstances. In most cases, the court supports visiting between the parent and child to maintain their bond until the child can return to the parent or until another permanency arrangement is decided upon.²⁰

20 For more information about direct placements, see pp. 11-13 in OCFS' *Having a Voice and A Choice* booklet.

If the child is placed in the direct custody of a relative or other suitable person, the agency—as part of its supervisory responsibility—continues efforts to assist the parent. The efforts include service planning for the child's return to the parent or another permanency option when return to parent is not possible, and may include arranging or coordinating visiting. In direct placements, the agency continues the Article Ten (abuse or neglect) proceeding and there are regularly scheduled permanency hearings in Family Court (the first one occurring 8 months after the child was removed from her home, and every six months thereafter). The agency must gather input from all the parties (parents, children, relative caregivers, etc.) and prepare a permanency hearing report for the court in advance of each permanency hearing.²¹

With direct placements, caregivers have the legal authority to care for the child temporarily under the protection of a court order. As mentioned above, in these arrangements caregivers are subject to the local child welfare agency's supervision and oversight.

FINANCIAL ASSISTANCE

Unlike foster care placement, caregivers in direct placements do not receive foster care payments.

Caregivers caring for children under direct placement may apply for Temporary Assistance (TA) for a Child Only Grant for the child's financial support. As explained in *Having a Voice and a Choice*, the application for this grant is based on the child's needs, and does not consider the caregiver's income in determining eligibility for the grant. At the same time, caregivers may apply for Medicaid to cover the costs of the child's health care. Caregivers may also be eligible to receive food stamps for the child and Supplemental Security Disability Income (SSDI) if the child is disabled. Caregivers who work may apply for help with child care costs.²²

Financial assistance received through a Child Only Grant is less than the foster care room and board rate, and the difference becomes greater for caregivers caring for more than one child. For caregivers interested in becoming foster parents, see the next section on **Foster Care**.

21 Direct custody placements are pursuant to FCA 1017(2) (ii) and are sometimes referred to as "N" docket or "1017" placements.

22 This paragraph is adapted from OCF's 2009 handbook, *Having a Voice and a Choice*, p.12.

FOSTER CARE

Children in foster care who have an incarcerated parent may have entered the child welfare system before their parent's arrest, at the time of arrest, or after their parent was incarcerated. In this last case, their incarcerated parent would be a "non-respondent" as the allegations of abuse or neglect would be against their current caregiver. When children enter foster care at the time of arrest, this may be because the crime or its consequences were child-related and led to both a criminal and Family Court case. It can also be because the parent had no appropriate or available caregiver to designate at the time of arrest. In the latter case, the parent is sometimes charged with "failure to plan" which is considered a form of neglect.

If a relative or family friend finds out that a child she is related to or knows well has entered foster care, she should contact the local child welfare agency immediately to discuss caring for the child, visiting with the child, or participating in planning meetings about the child's needs and future.

Children who are removed from their homes are placed in a foster family home, a group home, a childcare institution, or with relatives. State regulation allows children to be placed with relatives as "emergency placements," while the local child welfare agency certifies or approves the home as a foster home placement. If the expedited process is used, the home is approved for a 90-day period during which all the other requirements must be met (although the emergency period can be extended under limited circumstances to complete background checks). If a child welfare official asks a relative to take care of a child, the relative must be provided the previously mentioned two booklets that explain various placement and custody options.

Relatives should ask to speak to a local child welfare agency supervisor, their local OCFS Regional office, and/or call the New York State Kinship Navigator as soon as possible if their request to become foster parents has been met with resistance or denied.

When children come into foster care, they are placed in the legal custody of the local child welfare agency after a court has decided that their parents cannot care for them. This proceeding is governed by Article Ten and Ten-A of the Family Court Act. Once a removal occurs, OCFS requires that relatives, including all grandparents, be notified of their options by being located and given two booklets, *Having a Voice and a Choice* and *Know Your Options: the Kinship Guardianship Assistance Program*, which caregivers are required to receive to assist them in their choices at this point.²³

KINSHIP FOSTER CARE

New York State law requires local child welfare agencies to look for relatives to become foster parents (or care for children outside of foster care). Upon finding a suitable relative, the local child welfare agency and the Family Court judge should inquire whether the relative wishes to become a foster parent, to take direct custody with the continuing involvement of the local child welfare agency (“direct placement”), or to become an independent legal guardian or custodian.

Kinship foster care is foster care granted to a grandparent, other relative, or non-parent caregiver who knows the child (such as a family friend) until the parent and child are reunited or until a permanent home is found for the child. This can be through adoption or guardianship by the kinship foster parent. A kinship foster parent has temporary physical custody of the child, not legal custody; legal custody of that child remains with the local child welfare agency. The kinship foster care parent takes care of the child’s daily needs, but cannot make any legal or major decisions regarding the child without first obtaining the consent of the local child welfare agency.

In order to become kinship foster parents, caregivers must be certified or approved (depending on the degree of relationship to the child) after completing foster parent training, submitting to a background check, and meeting other licensing requirements, just like other “stranger” foster parents.

With kinship foster care, payments are paid and other forms of assistance and services are available. These payments are more than the child-only grant available through public assistance. With foster care, services received may include family services, payment of special

23 This requirement was implemented through two Administrative Directives (generally accepted as having the force of regulations): 09 OCFS ADM-4 and OCFS KinGAP 11 ADM-03.

JULIE

Julie is the paternal grandmother of a 4-year-old boy. Her son and daughter-in-law have recently been arrested and incarcerated. Child Protective Services (CPS) was called in to investigate allegations of child endangerment and inadequate supervision. Julie was informed by CPS that the child needed to be removed, but she was not given the option to be a foster parent. She is caring for the child through a direct placement, and has been encouraged to become the legal custodian, but is unsure of her options. Julie resides in Rockland County, but the child protective case is in Westchester County. Julie contacted the Kinship Navigator who put her in touch with the local kinship program in Westchester County. They contacted her caseworker and Julie was given the two required booklets to inform her of her caregiving options. She is now requesting to become a kinship foster parent and is hoping to start her certification process soon. In addition to the financial assistance, Julie wanted assistance in bringing her 4-year-old grandson to visit with both his parents who may be going upstate for a few years.

expenses, assistance with visiting incarcerated parents (includes coordinating, escorting children, and covering the costs of visits), therapy for the children (if needed), and educational assistance for the children. A list of services is available on the OCFS website.

For kinship foster parents, the local child welfare agency can waive certain requirements such as size of the living space and may also be able to place children in the homes (as “emergency placements”) at the same time as the kinship foster parents are getting approved and certified as foster parents. “Stranger” foster parents cannot have children placed in their home until after they are certified.

Kinship foster parents must fulfill all the same requirements as other foster parents (e.g., attend service plan reviews, have frequent contact with caseworkers, including home visits, and more). All adult members of the household must have criminal background checks and SCR database checks. Many relatives choose not to become kinship foster parents, nor to become temporary custodians, because they prefer to take care of the child without the local child welfare agency’s supervision and involvement in their home and life. These relatives can petition for legal custody or guardianship (under Article 6, see pp. 26-34). Courts may want to wait for efforts at reunification to be exhausted before granting custody or guardianship; however, if the parent is serving a prison sentence (more than one year) the court may be more likely to grant legal custody or guardianship.

PERMANENCY AND REUNIFICATION WITH PARENTS

The goal while the child is in foster care is to achieve permanency for the child, preferably by reuniting the parent(s) and the child. When a parent is incarcerated this can take more time depending on the sentence and may not be possible if the sentence is long. Although a New York State law (passed in June 2010 and known as Chapter 113) allows incarcerated parents (and parents in residential drug treatment programs) who meet certain criteria more time to reunify with their children—recognizing that they cannot fully plan for their children’s future from behind bars—children still need permanency outside of foster care, either with their own parents or other committed caregivers. When children are in the care of kinship foster parents and parents’ sentences are lengthy, the Kinship Guardianship Assistance Program (KinGAP, see p. 43) may be a good option.

If reunification with parents is not possible, the local child welfare agency is required to file a petition to terminate parents’ rights *unless* certain exceptions exist. Termination of parental rights (TPR) is the legal severing of the parent-child relationship; it is usually permanent although there is now a mechanism in specific cases for parent’s to petition for their parental rights to be restored (see p. 42).

One such exception to an agency filing for TPR is if the child is living with relatives: in this case, they do not have to file to terminate the parents’ rights.

At age 10 and older, children’s wishes are generally considered, but at age 14 or older a child’s consent to the adoption is required.²⁴ Often relatives caring for children may prefer not to terminate the parent’s rights. The parent may be their own daughter or son, or sister, and prefer to maintain family ties. Adopting your own grandchild or niece/nephew creates complicated relationships whereby grandma becomes mommy, and many families feel uncomfortable with this. However, an incentive to adopt is the financial assistance that comes in the form of an adoption subsidy.

Thankfully, there is now an option for a permanent arrangement that does not require the parent’s rights to be terminated and does allow the kinship foster parent to continue to receive financial assistance that is equivalent to the adoption subsidy. Made available in April 2011, this is called KinGAP. This is only for kinship foster parents after reunification and adoption have been ruled out as options. More details on KinGAP are found on p. 43.

WHEN CHILDREN ARE IN FOSTER CARE PRIOR TO ARREST

Sometimes parents are arrested or incarcerated after their children are in foster care. In fact, this happens more often than a child entering foster care at the time of or due to a parent's arrest.²⁵ If relatives seek to become the primary caregivers of a child already in foster care, the local child welfare agency may choose to continue placement with the current foster family. Factors such as how long the children have been with the foster family and the children's ages and attachment needs may all influence the decision at this point to place the children with relatives.²⁶

Relatives may petition for custody or guardianship or use Family Court Act (FCA) 1028-a to seek to become a foster parent. FCA 1028-a permits relatives to petition to become foster parents of children who are not in their care. There are many specific conditions that must be satisfied in order to have the petition heard, including:

- the relative has not refused previously to be considered as a foster parent or custodian of the child. A prior inability to provide immediate care for the child due to a lack of resources or inadequate housing, educational, or other arrangements necessary to care appropriately for the child is not considered a previous refusal;
- the application is brought within six months from the date the relative received notice that the child was being removed or had been removed from his or her home (and no later than twelve months from the date that the child was removed).

If a relative wants to become the foster parent of a child and meets these requirements, she can use FCA 1028(a) to file a petition.

MAINTAINING PARENTAL RIGHTS AS AN INCARCERATED PARENT

In June 2010, New York State passed a law—an amendment to the federal Adoption and Safe Families Act (ASFA)—that is also known as Chapter 113. This law assists parents in maintaining their parental rights while they are incarcerated.²⁷ Chapter 113 specifies that the local child welfare agency is not required to file for termination of parental rights when children are in foster care for 15 of the most recent 22 months,

25 See Ross, T., Khashu, A., & Walmsley, M. (2004). *Hard data on hard times: An empirical analysis of maternal incarceration, foster care, and visitation*. New York, NY: Vera Institute of Justice.

26 Although foster parents have no fundamental right to care for children, 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."

27 Social Services Law 384-b (3)(l)(i). See also 11-OCFS-ADM-7.

if on a case-by-case basis it determines that an incarcerated parent has played a “meaningful role” in the child’s life, continues to have a “meaningful relationship” with the child, and there is no documented reason why termination would be in the child’s best interest at this time. A parent must also be actively planning for her child to the best of her ability throughout her incarceration.

As mentioned earlier (p. 40), for caregivers caring for children as kinship foster parents, ASFA always had a kinship placement exception to filing to terminate parental rights at the 15 out of 22 months mark: foster care agencies are not required to file to terminate a parent’s rights if the children are in the care of kin, however, they may still decide to do so depending on the circumstances of the case. However, Chapter 113 draws particular attention to the barriers that incarcerated parents face in planning for their children and also counters the bias that some people (including some caseworkers and supervisors) have against parents who are incarcerated. The law assists incarcerated parents in reunifying with their children, as appropriate and in children’s best interests.

REGAINING PARENTAL RIGHTS—AFTER TERMINATION

In situations where a parent’s rights have been terminated and children in foster care have not yet been adopted, parents may petition for restoration of their parental rights. A law passed in November 2010 can assist parents to regain parental rights if they meet certain conditions including:²⁸

- the child is 14 years of age or older;
- at least 2 years have elapsed since the termination of parental rights;
- the original adjudication terminating parental rights was not based upon severe or repeated child abuse; and
- the child is under the jurisdiction of the Family Court, has not been adopted, and has a permanency goal other than adoption.

28 Passed into law on August 13, 2010, this Act established Chapter 343, “An Act to amend the Family Court Act and the Social Services Law, in relation to restoration of parental rights.” Effective November 11, 2010.

ADOPTION

Adoption legally replaces the birth parents with adoptive parents who assume the full rights and responsibilities of the birth parents. Adoption requires that the parents' rights are first terminated, although parents can also "surrender" their parental rights. If a parent voluntarily surrenders parental rights, he can designate who will adopt his children and/or specify certain conditions regarding contact post-adoption (such as visits or annual photographs). This is referred to as a "conditional surrender." Such conditions or agreements are legally enforceable, but an adoptive parent's failure to follow the agreement is not grounds to undo the adoption.²⁹ Parents whose rights are involuntarily terminated do not have a say in adoption details or post-adoption contact.

Caregivers who adopt a child assume legal and financial responsibility for the child's care, education and support. This means that the caregiver and family cannot receive a "child-only" public assistance grant based solely on the child's income and resources (described on p. 52). They may however, be eligible for the adoption subsidy (see below).

It is important to note that adoption changes the legal status of the biological parent and the caregiver who becomes the adoptive parent, but it does not erase memories or relationships, or core attachment needs. Many children want to continue to have some form of contact with their biological parents even after they are adopted.

The movement in the United States towards open adoptions reflects children's desires to have a relationship with both their biological parents and their adoptive parents. Co-parenting models (often put into place when parents get divorced) can greatly benefit children who may otherwise experience torn loyalties.

ADOPTION SUBSIDIES PROGRAM

Foster parents may receive an adoption subsidy that is similar to their foster care payments (after the parents' rights have been terminated and the adoption has been finalized). Adoption subsidies are available for foster-adopted children who are "handicapped" or "hard to place."³⁰ Most foster children are considered hard to place. To be able to receive an adoption subsidy, a foster parent must enter into an adoption subsidy agreement with the local child welfare agency before the child is adopted. If relatives or others want to adopt, but do not want to be certified as foster parents, it may be possible for their home to be approved as an adoptive home and in this case, there can be pre-finalization adoption subsidies which can be paid.³¹ There are also some children in the custody of an approved adoption agency who are eligible for subsidies. Another special feature to the adoption of kinship foster children is the opportunity for the birth parents to make an enforceable agreement indicating who may adopt the child or what contact the surrendering parent may have with the child. In New York State, adoption is sought at the Family Court in the jurisdiction where the child resides or in the county Surrogate's Court.

KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM (KINGAP)

In 2011, the Kinship Guardianship Assistance Program (KinGAP) became available for qualifying fully certified or approved kinship foster parents who have cared for the children placed with them as foster children for at least 6 months or more. KinGAP is designed to support permanent placements for foster children with relatives to whom they are related by either blood, marriage or adoption. This program provides financial support similar to the foster care maintenance payments received as a foster parent, but does so outside of the child welfare system.

OCFS offers a detailed booklet that walks caregivers (and interested others) through all the details of the program. See *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* available at <http://www.ocfs.state.ny.us/main/publications/pub5108.pdf>. This booklet includes a chart which compares kinship guardianship assistance, adoption assistance, and foster care to assist caregivers and incarcerated parents in figuring out which option is best. The following information on eligibility for KinGAP is adapted (with permission) from page 4 of the above booklet.

30 Social Services Law (SSL) 453.

31 See 10-OCFS-ADM-11.

ELIGIBILITY FOR KINGAP

The local child welfare agency will determine eligibility for KinGAP based on the specific details of an individual case, but general guidelines and minimal requirements for eligibility include the following:

- The child is under 21 years old and is in foster care;
- The caregiver is related to the child by blood, marriage, or adoption;
- The child has lived with the caregiver as a foster child for at least 6 consecutive months during which the caregiver has been a fully certified or approved foster parent;
- The child demonstrates a strong attachment to the caregiver;
- The caregiver demonstrates a strong commitment to caring permanently for the child;
- Neither a return to parent(s) nor adoption is an appropriate plan for the child; the local child welfare agency has determined that there are compelling reasons (such as long-term incarceration) that neither reunification nor adoption is in the child's best interests;
- The local child welfare agency has determined that it is in the best interests of the child for the caregiver to be his guardian;
- If the child is age 14 or older, the child must be consulted. At age 18 or older, the youth must consent to the kinship guardianship arrangement;
- The initial permanency hearing must have already taken place in Family Court;
- A fact-finding hearing must have been completed if the child was removed from the home due to abuse or neglect;
- Necessary criminal history record checks and child abuse/maltreatment database checks have been completed on the caregiver and other adults age 18 and over who live in the caregiver's home.

Caregivers may be entitled to kinship guardianship assistance payments for sibling groups, but each sibling must meet the above eligibility requirements on his or her own. State policy encourages siblings to be placed together in kinship guardianship arrangements whenever possible.

Once caregivers apply—and if their application for KinGAP is approved—then the local child welfare agency and the caregiver must enter into a “KinGAP agreement” before initiating the guardianship proceeding. Kinship foster parents are also eligible to receive up to \$2,000 in non-recurring expenses to obtain legal guardianship. Assistance may continue until the child is 18, or until age 21 if the child is age 16 or older when the guardianship went into effect and the child remains in school or is employed or in an employment program (unless incapable of doing so). Assistance ends when the relative guardian is no longer legally responsible, or is no longer providing support for the children.

It is important to note that childcare assistance as well as some additional services previously accessible through foster care may not be available to relative guardians under KinGAP. Relatives should ask their caseworker about which services will not be continued if they become guardians under KinGAP.

Information and forms for application and appeal (known as a “fair hearing”) as well as for all other steps in the process are available at the OCFS KinGAP website which also provides a booklet entitled, *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*.³² Court forms for the guardianship proceeding are available at the New York State Unified Court System website.³³ Caregivers with questions can also call the New York State Kinship Navigator.

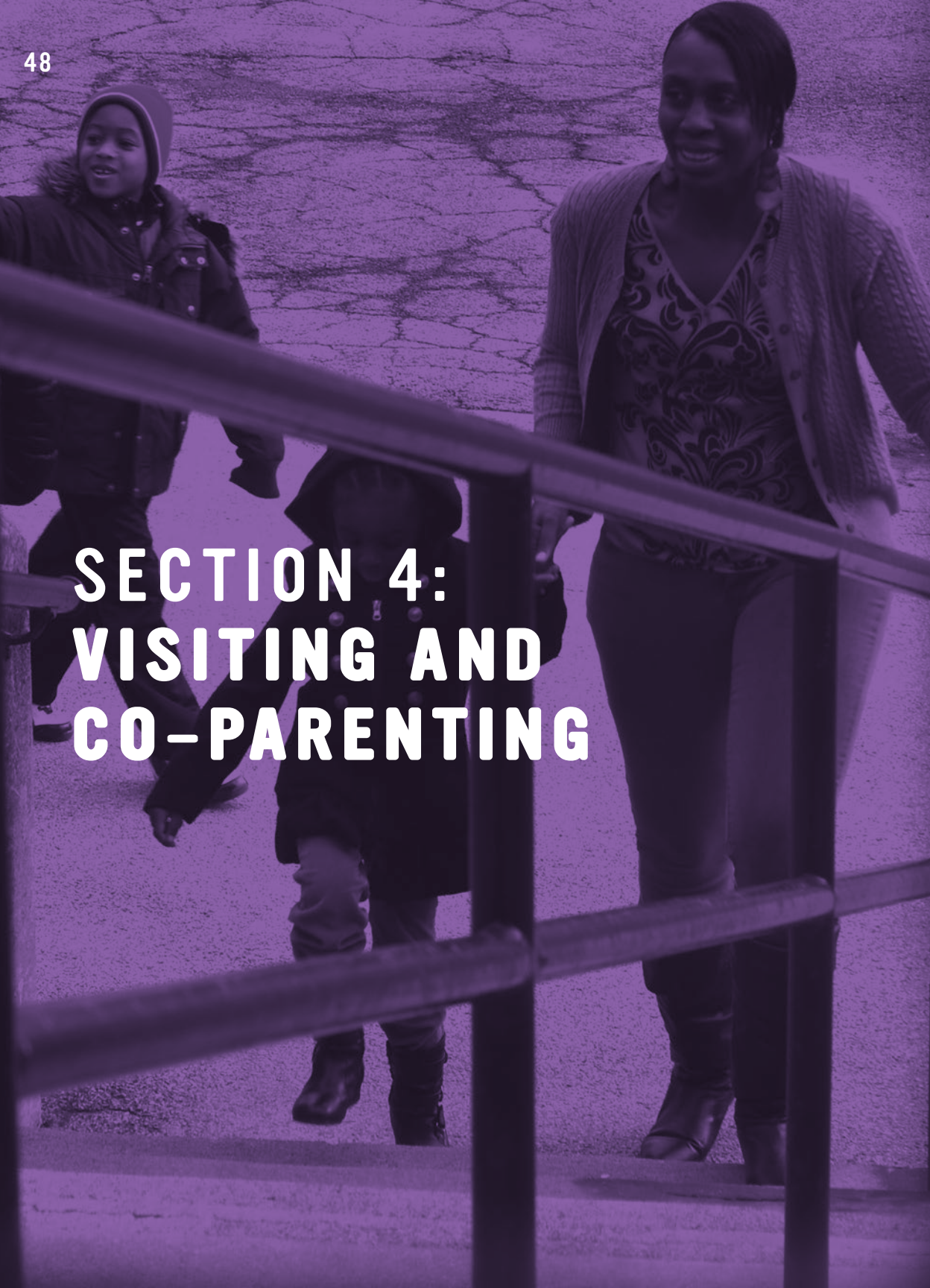
The remaining sections detail aspects of caregiving that are concerns regardless of which custody arrangement a caregiver has: questions about visiting and parenting with the incarcerated parent, about the children’s health, education and overall support for raising healthy children.

32 Visit <http://www.ocfs.state.ny.us/main/publications/pub5108.pdf> for a copy of the OCFS KinGAP booklet and see “Supporting Docs and Policies” at http://www.ocfs.state.ny.us/kinship/background_and_process.asp.

33 Copies of court forms are available at <http://www.courts.state.ny.us/forms/familycourt/guardianship.shtml>.

SASHA

Sasha is caring for her 5-year-old granddaughter, who has been in her care for at least a year. Her daughter has been incarcerated for the past 9 months, and has had Child Protective Services involved since the birth of her child. Nine months ago, Child Protective Services asked Sasha to care for her grandchild; she then took the steps to become an approved foster parent. Sasha is currently receiving a foster care stipend, but since her daughter will be incarcerated for the next 20 years, she would like a more permanent solution. Sasha has spoken with her caseworker about KinGAP, which would allow her to become the legal guardian for her grandchild and still continue to receive financial assistance equivalent to the adoption subsidy. Sasha is working with her caseworker and the local child welfare agency in order to become a kinship guardian.



**SECTION 4:
VISITING AND
CO-PARENTING**

While finances and decision-making about the children are certainly a large part of kinship caregivers' concerns, another aspect of caring for children whose parent is incarcerated is the degree and level of contact with the incarcerated parent. There are the children's emotional issues to consider, as well as the caregiver's own relationship with and feelings about the incarcerated parent. There are financial considerations, specifically related to the relationship between the child and the incarcerated parent, since both phone calls and visits are expensive.

Volume II of the series discusses visits, including not only the details of how to visit, but the details of why and whether to visit. Caregivers may not want to visit the incarcerated parent themselves or even speak with her on the phone, but may realize that the children in their care love and need their incarcerated parent. In this case, exploring who else can escort the children for visits, making sure not to speak badly about the parent in front of the children, and trying hard to support this relationship for the children's sake by co-parenting or communicating about the children with the parent are all very important. Seeking support as a caregiver for any or all of this is very important, as this may not be easy and it can feel lonely to struggle with this alone.

GRANDPARENT VISITATION

If the kinship caregivers who assume responsibility and care of the children are not the grandparents, there are special statutes governing grandparents' rights to see their children; this includes when children are in kinship foster care. Non-grandparent caregivers should also keep in mind that grandparents may be a resource for facilitating visits to the incarcerated parent, and providing additional emotional support. If there is conflict or resistance from the current caregivers in allowing grandparents to visit with their grandchildren being cared for by other kinship caregivers (including kinship foster parents), grandparents can go to court and seek visitation rights.³⁴

34 Sections of the law pertaining to Grandparent Visitation: DRL 72 (visitation with parents); FCA 651(b), 1081 & 1083 (visitation for children in foster care). See also: *E.S. vs. P.D.*, 8 N.Y.3d 150 (2007), also, *Matter of Loretta D. v. Commissioner of Social Services of City of New York*, 177 A.D.2d 573, 574-5 (2nd Dept. 1991).

In New York State, Domestic Relations Law Section 72—originally enacted in 1966—permits grandparents to seek visitation when one or both of the parents has died or when “equity would see fit to intervene.” Courts have interpreted “equity” to give standing to grandparents who have had a relationship with their grandchildren or been thwarted by the parents from having such a relationship. Grandparents may seek visitation via DRL § 72 even when both parents are united in opposition.

When a parent is incarcerated, grandparents who are not caring for the children may need to invoke these statutes if the current guardian of the children (including the foster care agency and the local child welfare agency) is not allowing them to see their grandchildren.

CHILDREN IN FOSTER CARE

For children who are in kinship foster care and foster care in general, the foster care agency and assigned caseworker have an obligation to locate an incarcerated parent and arrange visits, when in the child’s best interests. Local child welfare agencies must diligently support and encourage a meaningful relationship between a child and a parent (even if the parent is incarcerated), and must initially work towards reunification in all cases except where a court has ordered otherwise. This is referred to as providing reasonable or diligent efforts. “Diligent efforts” means:

“Making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child.... Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent’s ability to maintain contact with the child.”³⁵

Foster care agencies and correctional facilities must cooperate to arrange visits between children in foster care and their incarcerated parents. One advantage of foster care for caregivers is that the foster care agency must not only arrange, but must cover the costs of the visiting trip. Given that many incarcerated mothers have children living with kinship caregivers and are incarcerated in one of five upstate prisons, the

35 Social Services Law 384-b(7)(f)(5). See also Corrections Law 619.

JOSEPH AND KAREN

Due to their own health issues, Joseph and Karen could not agree to take full custody of their three grandchildren when their mother was incarcerated. This decision was a painful one for them as they loved their grandchildren and saw them frequently. Unfortunately, CPS removed the children from the family friend who was caring for them due to allegations of abuse, and the children were placed in foster care. Now, six months later, Joseph and Karen have not been allowed to see their grandchildren and are very unhappy about it. Prior to this, they saw their grandchildren several times a week. They call the foster care agency every day but get no answers; they are often told one thing, then another, and don't know what to trust. Joseph and Karen are very worried, upset, and miss their grandchildren. They have not been given the foster parent's phone number, so can't even talk with the children on the phone to reassure them. Seeing no other way, they have filed in Family Court for visitation rights and are hoping this will be effective.

assistance of the foster care agency in arranging visits is an important consideration in deciding whether to become a kinship foster parent (SSL 384-b; Corrections Law 619).

The Department of Corrections and Community Supervision's website offers a guide, *Handbook for the Families and Friends of NYS DOCCS Inmates*, that contains information about visiting.³⁶ Additionally, each correctional facility, county jails, and other secure facilities have their own rules about visiting. If visiting a state prison, if the caregiver is on the incarcerated parent's "approved visitor" list and bringing the children of this parent, only birth certificates of the children and photo ID for the caregiver will be needed. Jails and prisons will have different requirements, so it is very important to call in advance to find out what documentation is required. When calling, be sure to also ask about:

- dress code requirements;
- allowable items (particularly if visiting with infants or toddlers);
- length of visits; and
- visit area conditions for children (children's area? toys? games?).

When bringing children to see their incarcerated parents it is very important to talk to them about the visit beforehand and to let them know what to expect prior to the visit. Support for children after visits is also important, and caregivers should expect that children will have some response stemming from the emotional pain of the situation. This is particularly true for the first visits, but also in situations where children are young and attached to the missing parent, where children have a close relationship with the parent, or where the parent was the primary caregiver prior to incarceration. In all of these cases, the pain of saying goodbye can be great.

All of this and more is discussed in **Volume II**, and **we strongly recommend that caregivers read Volume II before bringing children to visit their incarcerated parents, or before making any decision that visits are not in the children's best interests.**



**SECTION 5:
FINANCIAL
ASSISTANCE**

The majority of kinship caregivers need financial assistance. The previous sections have included some information about the financial assistance available under different caregiving arrangements. This section provides some additional information about benefits and assistance, including tax credits and other sources of support.

There are a number of government programs that provide financial assistance for low income and/or financially “needy” children. These include:

FAMILY ASSISTANCE: TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF)

Family Assistance (TANF) is cash public assistance, available from the local child welfare agency. It assists “needy children and their families” to help pay for basic needs. Eligibility is based on the number of people in the family unit, family income and assets. All Family Assistance recipients are automatically eligible for Medicaid.

Two types of grants are available:

1. Family Assistance

Caregivers can apply for themselves and for the children in their care as a family unit. In this case, all income and assets will be counted in determining eligibility. If the adult caregivers want assistance based on their income and resources, then they are required to participate in work activities, job training or community work experience—unless they are disabled or elderly (over sixty)—in order to receive assistance. It is important to know that the New York State Welfare Reform Act of 1997 imposes a cumulative five-year time limit on Family Assistance.

2. Child-Only Grant

The Child-Only Grant, also referred to as the “Non-Parent Caregiver Grant,” does not look at the income and resources of the relative caregivers. This grant is based *only* on the income and resources of the children, because the non-parent caregivers do not have the legal obligation to provide for the children. Caregivers should be aware that their own income does not count

in determining eligibility (as it does if they are applying for Family Assistance for themselves and the child, or if they have adopted). To apply, caregivers should fill out the applications from the perspective of the child, not the caregiver. For instance, if the question on the application is, “Do you have a bank account?,” the answer would be “no” if the child does not have his own bank account.

Grandparents and other relative caregivers who seek a non-parent grant will be asked to inform the Human Resource Administration (HRA) if in New York City, or the Temporary Assistance office if elsewhere in New York State of their income and resources. HRA does not use this information to decide eligibility for the non-parent grant, but HRA is required by federal law to record the adult relative caregiver’s income and resources.

It is a good idea to write “Non-Parent Grant” on the top of the first page of the application. For more information, see the “How to Apply for Public Assistance”³⁷ and also the “Kinship Navigator Guide to the Child-Only Grant and Other Benefits for Non-Parent Caregivers,”³⁸ both available on the New York State Kinship Navigator website.³⁹

Sometimes kinship caregivers are told that they must have legal custody or guardianship in order to apply for a non-parent grant. This is not the law. Regardless of whether the caregiver has custody or guardianship or the arrangement is informal, caregivers have a right to submit an application.

If an application for the non-parent grant is denied, do not give up. Contact a legal assistance program or the New York State Kinship Navigator, which can help you in asking for an appeal, which consists of

37 <http://www.nysnavigator.org/legal/documents/Publicassistanceguide2.pdf>.

38 http://www.nysnavigator.org/documents/NYS_Kinship_Navigator_PA_Guide_2012-Final1.pdf.

39 Also more information on how to apply and complete HRA applications can be found at the HRA Department of Social Services website at <http://www.nyc.gov/html/hra/html/applications/forms.shtml>. For outside NYC, information can be found on the Office of Temporary and Disability Assistance (OTDA) website: <http://otda.ny.gov/programs/temporary-assistance/>.

MARY

Mary is caring for her 15-year-old grandson, who has been in her care for 6 months. Her daughter has substance abuse problems, and as a result, finds herself in jail for periods of time. As a result, Child Protection Services has asked Mary to take temporary custody of her grandson. Mary has not cared for a child in over 20 years and is a little lost as to how to cope, especially with a teenager. Mary qualifies for the Non-Parent Child-Only (NPC) grant which can assist her financially. Luckily, the Kinship Navigator told her about Orange County's Relatives as Parents Program (RAPP) for support. Additionally, Mary has been attending the New York City's Department for Aging Grandparent Resource Center's "Parenting a Second Time Around" (PASTA), workshop in order to get a refresher course on parenting a teen—dealing with peer pressure, drug and alcohol temptation, and school issues.

a “fair hearing.” Caregivers can fax their request for a fair hearing to the state office indicated in the denial letter. Upon appeal, a high percentage of denials are found to be without merit (i.e., they are overturned). It is a legal right for anyone to apply for public assistance and to appeal (by asking for a fair hearing) a denial of assistance.

FOOD STAMPS: SUPPLEMENTAL NUTRITION ALLOWANCE PROGRAM (SNAP)

The Supplemental Nutrition Allowance Program (SNAP), is the program formerly known as food stamps. SNAP benefits can be used to purchase food items and are redeemed by using a Common Benefit card. Food can be purchased at grocery stores, convenience stores, and some farmers’ markets and co-op food programs. SNAP eligibility is based on the income of everyone in the household. For instance, if a grandchild is income-eligible for Family Assistance through a non-parent grant, but the grandparent does not qualify, it is unlikely that the family unit would be eligible for SNAP. If the relative is the KinGAP guardian or relative foster parent then the child may or may not be included in the SNAP household for determining eligibility (see the chart attached to the OCFS KinGAP booklet referred to here on page 43) for more information. However, under certain circumstances, for persons who have disabilities and must cook separate meals, their SNAP eligibility will be determined under special rules that take their circumstances under consideration.

WOMEN, INFANT AND CHILDREN (WIC) SUPPLEMENTAL NUTRITION

Women, Infant and Children (WIC) clinics provide special supplemental nutrition for high-risk pregnant and breastfeeding women, as well as to infants and children up to 5 years of age. Clients gain access to medical care and are provided supplemental food vouchers, nutrition education and breastfeeding support. The WIC program is free to women, infants and children who are found to be medically and financially eligible.

Caregivers may also qualify for benefits. Application forms are available at all Health Department offices.

SUPPLEMENTAL SECURITY INCOME (SSI)

Supplemental Security Income (SSI) is cash assistance for people who are aged, blind or disabled and have limited income and resources. For information, call Social Security at 1-800-772-1213 or visit the New York State Kinship Navigator’s website for fact sheets on SSI.

SOCIAL SECURITY SURVIVORS BENEFITS

Social Security Survivors Benefits are monthly cash benefits for unmarried children under the age of 18 (or full-time students under 19 and older disabled children) whose parents have died. The parent in question must have worked, paid Social Security taxes, and earned enough credits to generate benefits. Applications should be made to the Social Security office, not the local child welfare agency. Caregivers will need original documents or certified copies of the child’s Social Security card and birth certificate, the parent’s Social Security number, the parent’s death certificate, and the deceased parent’s W-2 forms or Federal tax return (if self-employed) for the most recent year. A child who is adopted (by his grandparent or anyone) is also eligible. Children in foster care and in KinGAP arrangements are also eligible.

TAX BENEFITS

In addition to financial assistance, there are also certain tax benefits for which relatives raising children may be eligible. These benefits are “credits” which are financially more advantageous than deductions.

All caregivers—adoptive and foster parents, and relative guardian caregivers—can benefit from consulting a tax professional.

Relatives who have adopted may be eligible for the Federal Adoption Tax Credit: see OCFS’s website for a copy of “10-OCFS-ADM-06” for more information, or call the New York State Kinship Navigator. Relative foster parents may also be eligible for tax benefits. Both adoptive and foster families (as well as relative guardians) should consult a tax professional.

Tax credits are the most effective way of reducing income taxes because credits directly reduce the amount of taxes owed. Some credits are “refundable,” which means that if the credit is larger than the amount of taxes due, then a refund is paid out to you.

CHILD AND DEPENDENT CARE CREDIT

The Child and Dependent Care Credit is a tax credit benefit for working people who pay for someone else to care for their child, spouse, or dependent while at work. The provider must not be the claimant’s spouse, child, or anyone else who is a dependent. In a single parent family, the single parent must be working. In a two-parent family, both parents must be working. In order to qualify, the child must be either less than 12 years old, or older than 12 and physically or mentally incapable of self-care. Each qualifying person must be identified on the tax return to receive the credit. The child must have a Social Security Number (SS) or Individual Taxpayer Identification Number (TIN) and must live with the parents or relative caregiver. The credit is based on the cost of child care. The parent must provide the child care provider’s Social Security or ID number, the name of the provider’s organization, and the address. For more information, call the IRS and ask for Publication 2441.⁴⁰

EARNED INCOME TAX CREDIT (EIC)

The Earned Income Tax Credit (EIC) is a special benefit for low and moderate income working people including grandparents and other relatives who are raising children. The EIC program provides additional income via this “refundable” credit because it will pay out any unused credit. EIC is a tax credit program that is administered by the United States Internal Revenue Service (IRS). In most cases, the EIC does not affect eligibility for benefits like TANF, Medicaid, Food Stamps, SSI, or public or subsidized housing. The only way to get the EIC is to file an income tax return with Form 1040A or 1040 and attach Schedule EIC. Caregivers may file an income tax return even if they have low or no income as long as a child has lived with them for more than half of the year. For more information, call the IRS and ask for Publication 596.

New York also has a state Earned Income Tax Credit Program. Qualifying residents of New York State may claim up to an additional 30% of the Federal Earned Income Tax Credit program. To qualify, you only need to

40 Internal Revenue Service (2011). *Ten Things to Know About the Child and Dependent Care Credit* [Fact Sheet]. Available on the IRS website at <http://www.irs.gov/newsroom/article0,,id=106189,00.html>.

be qualified for the federal level EIC and also be a resident of the state of New York. For more information, call the IRS and ask for Publication 8812, "Additional Child Tax Credit."

FREE TAX ASSISTANCE

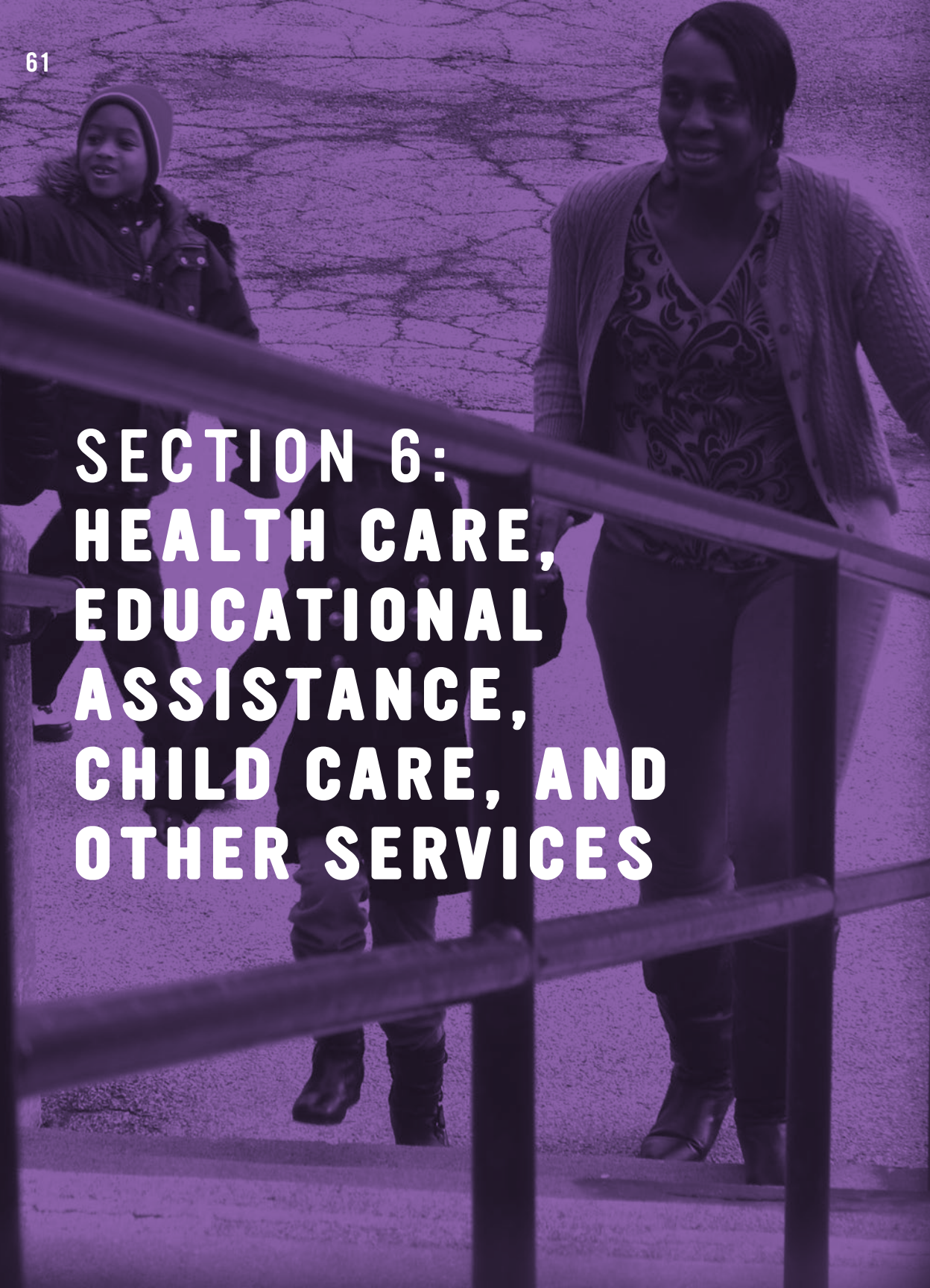
Free tax assistance and help completing the necessary forms is available to caregivers. The IRS Volunteer Income Tax Assistance (VITA) and the Tax Counseling for the Elderly (TCE) Programs offer free tax help for taxpayers who qualify. You can call the IRS office at 1-800-829-3676 for forms. You can also call the IRS at 1-800-829-1040 for further information and help. The New York State Kinship Navigator also provides updated tax information on tax credits.

During income tax season, many county area offices for the aging (such as the New York City Department for the Aging) provide assistance by IRS-trained volunteers in preparing and filing federal and state income tax forms for people 60 years and over.

Additionally, the AARP Tax Aide Program, with its local sites that operate from February 1st to April 15th, can help complete the appropriate forms. Contact the AARP Tax Aide Program at 1-888-227-7669 to find the site location nearest you.

Also, the Office of Temporary and Disability Assistance (OTDA), releases a list of Volunteer Income Tax Assistance Sites (VITA) each year. Visit the OTDA website to find the location nearest to you.⁴¹

41 For a copy of the OTDA list of volunteer tax assistance sites, visit the OTDA website at www.otda.ny.gov.



**SECTION 6:
HEALTH CARE,
EDUCATIONAL
ASSISTANCE,
CHILD CARE, AND
OTHER SERVICES**

HEALTH INSURANCE

Relative caregivers in the paid work force may find it difficult to find health insurance coverage for children because their employer-provided group insurance may not cover children in kinship care arrangements. Contact your employer and/or insurance company to find out what coverage you have. Note that DRL 74 mandates that health insurance providers cover children when their legal custodian or guardian wants to add them to his insurance policy. Medicare does not provide health coverage for children, so Medicare recipients must look elsewhere. All children who meet the qualifications for eligibility can be insured through Medicaid, Child Health Plus, or Family Health Plus as detailed below.

MEDICAID

In New York State, the medical assistance program is called Medicaid. It is a program funded by the state and federal governments, which helps people who are receiving public assistance and/or have a low income pay for doctor and hospital bills and some medication. Kinship caregivers can apply for Medicaid for children at their local child welfare office. Children in foster care or KinGAP arrangements are eligible for medical assistance, unless they are non-qualified immigrants (in this case, children are eligible for Child Health Plus). They should make sure to apply and sign the application form as soon as possible, because payment for medical expenses can only extend back three months prior to the date of application.

Eligibility:

Federal law requires states to provide medical assistance benefits to individuals who receive Family Assistance (TANF, formerly AFDC) grants or Supplemental Security Income (SSI) and children in foster care. Note that if a caregiver has been told that the child is not eligible for Family Assistance or SSI, you should still apply for Medicaid on the child's behalf by going to your local child social services district office (HRA in New York City).

CHILD/TEEN HEALTH PROGRAM (CTHP)

The Child/Teen Health Program (CTHP) is a provision of the federal Medicaid program which provides financially needy children with preventive health care.

Every child who is eligible for Medicaid is eligible for the federally funded Child/Teen Health Program (CTHP) services. CTHP is a critical program because it provides many services that may not be available to adult Medicaid recipients.

CHILD HEALTH PLUS AND FAMILY HEALTH PLUS

In addition to the Medicaid program, New York State also offers low-cost health insurance for children up to age 19 called Child Health Plus and Family Health Plus for adults between the ages of 19 and 64. **Immigrant status is not considered for this program.** The programs are available to New York State families who are not eligible for Medicaid and have limited or no health insurance. Even if family income is high, caregivers may enroll a child in the program (although payments will be higher). The fees for Child Health Plus are based on family size and income.

EDUCATIONAL ASSISTANCE

FREE SCHOOL MEAL PROGRAMS

Children in foster care and KinGAP arrangements are automatically eligible for free school meal programs.

The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are federally assisted meal programs that provide nutritionally balanced free, low-cost or full price meals to schoolchildren. All children can obtain a nutritious breakfast or lunch at participating schools. Meals may be free, reduced price, or full price depending on the income of the household. Children from households that receive public assistance, food stamps or Medicaid automatically qualify for free meals and do not have to submit an application (instead, a certification letter needs to be obtained from the Office of Temporary and Disability Assistance and submitted to the child's school). Other families no longer need to submit an application with the school.⁴² If you do not have a Social Security number, you can indicate that on the application and you will not be denied meals. School breakfasts and lunches are available at public schools, nonprofit private schools, or residential childcare institutions. In New York State, almost all public schools are a part of the National School Lunch Program.

For more information, contact your School Food Service Manager or the School Business Office for more information or call the Hunger Action Network at 1-518-434-7371, and in NYC 212-741-8912.

SPECIAL EDUCATION SERVICES

Any student with a disability is entitled to receive a "free and appropriate public education in the least restrictive environment." If a caregiver suspects that a child has a disability and would benefit from special services, the caregiver must request this in writing by sending a letter to the Committee on Special Education in the school district or to the principal of the school. The letter should include the reasons for making this request and any details that describe the child's areas of difficulty. Date

42 For more information, please see OCFS' website: http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/INFs/11-OCFS-INF-07%20Eligibility%20for%20Free%20School%20Meals%20%20Foster%20Children%20%20Children%20Placed%20by%20Court%20with%20Caretaker%20Households%20.pdf.

the letter and keep a copy. It is a good idea for the caregiver to first discuss this with the incarcerated parent, as the parent’s consent will be necessary for this request to move forward.

The Committee on Special Education (CSE) will send 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 agreement is reached on the plan—including the appropriate tests—the parent’s consent will be needed. If the caregiver has been designated as the “person in parental authority” by the parent, then she can sign and return the plan.

In New York State, the school district has 40 school days from the date of the parent’s or caregiver’s original letter or within 30 school days from receipt of the signed consent to complete the evaluation. The results of the evaluation are used to determine a child’s individual needs.

If the evaluation determines that a child requires special education, the recommendation will: identify the disability; describe the child’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 the child will receive. All of this information will be included in the Individualized Education Program (IEP).

The needs of many children with disabilities can be met in a public school setting with peers who are not disabled. 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—including the incarcerated parent—as appropriate. Your involvement as a caregiver and your communicating with the child’s parent (as appropriate) is essential. For more information, see the *Special Education in New York State for Children Ages 3-21: A Parent’s Guide*, available on the New York State Education website.⁴³

43 <http://www.p12.nysed.gov/specialed/publications/policy/parentsguide.pdf>.

CHILD CARE

Assistance with child care is sometimes available from the local child welfare agency when children are in foster care. For children *not* in foster care, an application can be made to the local child welfare agency and eligibility will be determined based on community standards. Children who are adopted or in a KinGAP arrangement will not be eligible for this assistance through child welfare based on their status. Foster care payments, adoption subsidy payments, and KinGAP assistance payments are not considered as income in determining eligibility for a child care subsidy. Visit OCFS's website or contact the New York State Kinship Navigator for more information. The following are the types of childcare available:

CHILD CARE CENTERS (BIRTH TO PRE-SCHOOL AGE)

These are full or part-day programs in public or private locations. They include day care centers and Head Start programs (free part-day programs for income-eligible children). Children are grouped according to age. For more information on daycare programs, caregivers can speak with their caseworker at the local child welfare agency or visit the New York State Council on Children and Families webpage about early education and Head Start programs in New York State at <http://www.early-childhood.org/standards/descriptions.cfm>.

FAMILY CHILD CARE HOMES

This refers to care for children in the home of another family. Children of various ages can be accommodated in a small group setting, and flexible hours can be arranged. The number of children allowed in the care of any family childcare home is regulated by the state.

44 For more information, please see OCFS' website: http://www.ocfs.state.us/main/policies/external/OCFS_2012/LCMs/12-OCFS-LCM-03%20Kinship%20Guardianship%20Assistance%20Program%20Payments%20Excludable%20Income%20for%20Child%20Care%20Subsidy%20Program%20Eligibility.pdf.

IN-HOME CARE

This is care in a child's own home by a person hired specifically for that purpose.

SUMMER DAY CAMPS

Camps offer summer activities usually for school-age children. Programs vary from the number of hours per day to the number of weeks in a session.

SCHOOL-AGE CHILD CARE

School-age child care is a patchwork of childcare programs run by community groups, parents, school boards, associations, and recreation programs. Child care is provided on a regular basis to seven or more children in kindergarten through 5th grade or who are incapable of caring for themselves.

A photograph of a woman and two children walking down a set of stairs. The woman is on the right, wearing a patterned top and a cardigan. Two children are on the left, one in a dark jacket and the other in a dark coat. A metal railing is in the foreground. The entire image has a purple tint.

CONCLUSION

Caring for children is a challenging task under the best of circumstances; it can be overwhelming when caregivers are assuming responsibility for children they love, but were not planning on raising full time. Add to this the stigma that goes along with a parent's incarceration, the feelings and questions that children and caregivers have about this, and the complexities of the criminal justice system, and it is a wonder caregivers find the strength to get up in the morning! Caregivers are the unsung heroes behind children whose parents are incarcerated, and often behind their parents as well.

We hope that the information offered in this handbook lightens the load for kinship caregivers by providing essential information and resources, and by reducing the isolation that can be an additional burden. We also hope it enables professionals in a position to support these caregivers to better understand the challenges faced, the rights and options that caregivers have, and the resources available to assist and support them and the children in their care.

Together we can support and raise healthy children, and caring for the caregivers is critical to this goal. **Together—caregivers, parents, professionals and children—we are stronger than we are apart.**

APPENDIX A:

BE SURE YOUR CHILD IS CARED FOR AND SAFE*

This information sheet was prepared as part of a flyer to help parents who have been arrested plan for their children. While the flyer does not provide legal advice, it does explain various short- and long-term options that help parents plan appropriately for their children's care and provides information about resources that can be helpful to parents, their children and their children's caregivers. This flyer should not take the place of speaking with a lawyer about your plans for your child.

- 1. IF YOU ARE ARRESTED, CALL SOMEONE IMMEDIATELY!**
- 2. IF YOU ARE SENT TO JAIL OR PRISON, MAKE PLANS AND ARRANGEMENTS FOR YOUR CHILD! TAKE IMMEDIATE STEPS — CALL SOMEONE!**

Make arrangements for today and for as long as you will be unable to care for your child. You may need to ask one person to care for your child immediately and another person to provide longer-term care.

- 3. APPOINT A CAREGIVER IMMEDIATELY!**

If you are your child's only caregiver, ask your child's other parent, a relative or friend to care for your child and put it in writing. This gives that person the legal ability to make education and medical decisions for your child. There are two forms that you can use to appoint a temporary caregiver. The two forms are for different time periods and have different requirements. Always do a separate form for each of your children. The caregiver can show the completed form to your child's education and healthcare providers and they can make copies of the form. Both forms are available on the New York State Permanent Judicial Commission on Justice for Children's website.

Form 1. Parental Appointment of Your Child’s Caregiver for 30 Days or Less

- Complete this form immediately.
- It is easy for you to fill in and give to the caregiver.

Form 2. Parental Appointment of Your Child’s Caregiver for 6 Months or Less

- Complete this form as soon as possible and before the 30-day arrangement ends.
- This form must be signed in front of a notary public by you and the caregiver. You can have it notarized together or separately. If done separately, you, the parent, must have it notarized first.
- You can renew this arrangement. Complete and notarize new forms for each of your children before the 6-month period is over.

For a copy of the flyer (available in multiple languages) and forms visit the Permanent Judicial Commission on Justice for Children’s website at www.nycourts.gov/ip/justiceforchildren/incarceratedparents.shtml.

APPENDIX B: PARENTAL APPOINTMENT OF YOUR CHILD'S CAREGIVER FOR 30 DAYS OR LESS

FORM 1. PARENTAL APPOINTMENT OF YOUR CHILD'S CAREGIVER* FOR 30 DAYS OR LESS

Filled Out by Parent

I, *(your name)* _____,

parent of *(your child's name)* _____,

choose *(caregiver's name)* _____,

who lives at *(caregiver's address)* _____

to be the caregiver and the person able to make education and healthcare decisions, including consent for routine and emergency medical treatment, for my child. This gives the caregiver full authority for *(number from 1 to 30)* _____ days that starts on the date below and ends earlier if I say so.

Sign Here: _____

Date: _____

*Do a separate form for each child.

The caregiver can show this form to education and healthcare providers.
The education and healthcare providers can make copies of this form.

This form was prepared as part of a flyer to help parents who have been arrested plan for their children. While the flyer does not provide legal advice, it does explain various short- and long-term options that help parents plan appropriately for their children's care and provides information about resources that can be helpful to parents, their children and their children's caregivers. The flyer is available on the NYS Permanent Judicial Commission on Justice for Children's website at <http://www.nycourts.gov/ip/justiceforchildren/incarceratedparents.shtml>.

This flyer should not take the place of speaking with a lawyer about your plans for your child.

APPENDIX C:

PARENTAL APPOINTMENT OF YOUR CHILD'S
CAREGIVER FOR 6 MONTHS OR MOREFORM 2.
PARENTAL APPOINTMENT OF YOUR CHILD'S CAREGIVER
FOR 6 MONTHS OR LESS

Filled Out by Parent (Do a separate form for each child)
<p>I, (your name) _____, parent of (your child's name) _____ _____, date of birth (your child's date of birth) _____, choose (caregiver's name) _____ to be the caregiver and the person able to make education and healthcare decisions, including consent for routine and emergency medical treatment, for my child. This gives the care- giver full authority for my child's education and health decisions from (start date) _____ to (end date) _____ unless I say so otherwise. The caregiver's phone number is _____.</p> <p>The caregiver's address is _____.</p> <p>When I was taken into custody, my home address was _____ _____. I expect to be in the following location (name of jail/prison) _____ _____ and cannot be contacted directly by phone. My department identification number or book and case number is (your number or leave blank if unknown) _____.</p> <p>There is no court order in effect that stops me from making this appointment.</p> <p>Sign Here: _____ Date: _____</p>
Filled Out by Notary
<p>STATE OF NEW YORK COUNTY OF _____ ss.: On the _____ day of _____, 20_____, before me personally came _____, known to me to be the person described in and who signed the within document, and to me such person duly acknowledged that he/she executed same.</p> <p>_____ Notary Public</p>
Filled Out by Caregiver
<p>I, (your name) _____, consent to assume the responsibilities and duties of an appointed caregiver (person in a parental relation) to this child.</p> <p>Sign Here: _____ Date: _____</p>
Filled Out by Notary
<p>STATE OF NEW YORK COUNTY OF _____ ss.: On the _____ day of _____, 20_____, before me personally came _____, known to me to be the person described in and who signed the within document, and to me such person duly acknowledged that he/she executed same.</p> <p>_____ Notary Public</p>
<p>This form was prepared as part of a flyer to help parents who have been arrested plan for their children. While the flyer does not provide legal advice, it does explain various short- and long-term options that help parents plan appropriately for their children's care and provides information about resources that can be helpful to parents, their children and their children's caregivers.</p> <p style="text-align: center;">The flyer is available on the NYS Permanent Judicial Commission on Justice for Children's website at http://www.nycourts.gov/ip/justiceforchildren/incarceratedparents.shtml.</p> <p style="text-align: center;">This flyer should not take the place of speaking with a lawyer about your plans for your child.</p>

APPENDIX D: ADDITIONAL LEGAL CITATIONS

NEW YORK STATE LAWS (STATUTES)

Available at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

DRL (Domestic Relations Laws) are found by clicking on DOM.

SSL (Social Services Laws) are found by clicking on SOS.

FCA (Family Court Act, located at the end of the listing under COURT ACTS, are found by clicking on FCT.

NEW YORK STATE REGULATIONS

New York State regulations are referred to as NYCRR which stands for New York Codes, Rules, and Regulations. The NYCRR primarily contains state agency rules and regulations adopted under the State Administrative Procedure Act (SAPA). Title 18 of the NYCRR contains codes, rules and regulations for “family assistance.”

Regulations can be found online at the Department of State website: www.dos.ny.gov. A search can be done by regulation number or “Google” the regulation number.

NEW YORK AND FEDERAL CASE LAW

Case law refers to judicial decisions that have the same effect as laws because they create precedents which courts must follow. Many cases are available at free sites. Often the case can be found by searching for it by name of parties.

Visit: <http://law.justia.com/>.

<http://caselaw.findlaw.com/courts/New-York>.

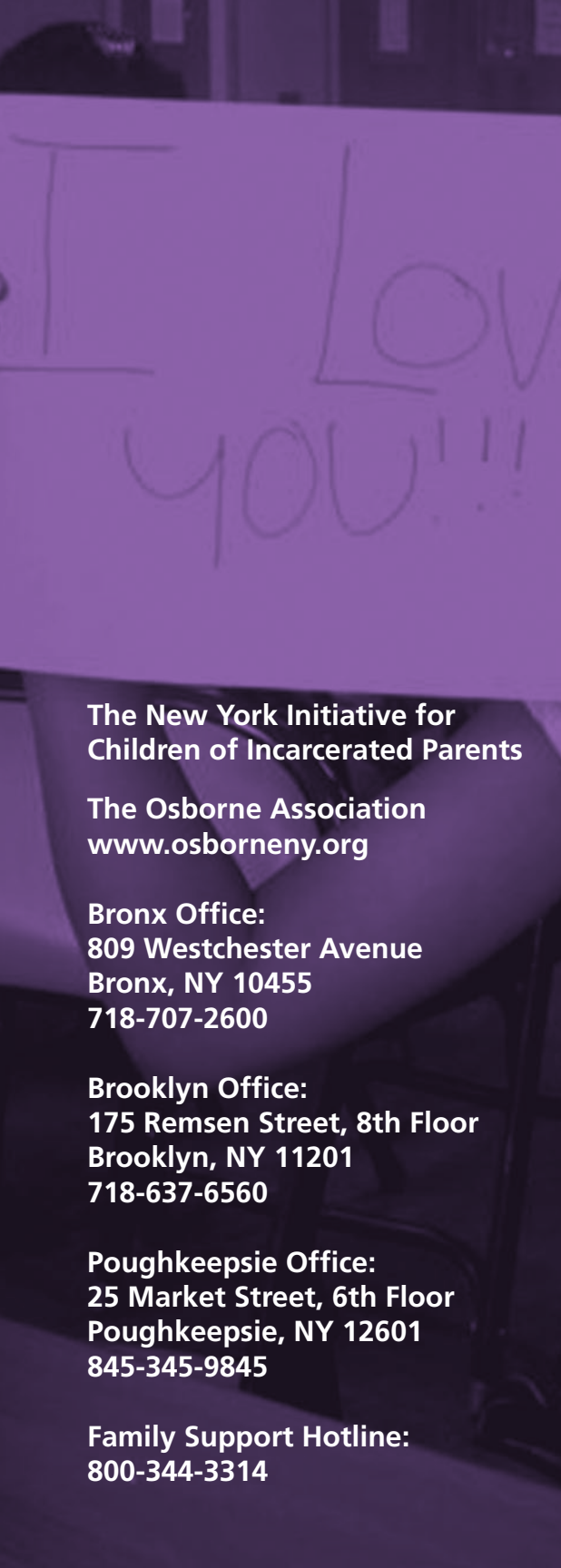
<http://www.lexisnexis.com/partners/barassociations/modules/nysba/caselaw.asp>.

Each county maintains a court library open to the public. Information is available at <http://www.nyccourts.gov/lawlibraries/publicaccess.shtml>.

CHILDREN OF INCARCERATED PARENTS:

A BILL OF RIGHTS

- 1 I have the right TO BE KEPT SAFE AND INFORMED AT THE TIME OF MY PARENT'S ARREST.**
- 2 I have the right TO BE HEARD WHEN DECISIONS ARE MADE ABOUT ME.**
- 3 I have the right TO BE CONSIDERED WHEN DECISIONS ARE MADE ABOUT MY PARENT.**
- 4 I have the right TO BE WELL CARED FOR IN MY PARENT'S ABSENCE.**
- 5 I have the right TO SPEAK WITH, SEE AND TOUCH MY PARENT.**
- 6 I have the right TO SUPPORT AS I STRUGGLE WITH MY PARENT'S INCARCERATION.**
- 7 I have the right NOT TO BE JUDGED, BLAMED OR LABELED BECAUSE OF MY PARENT'S INCARCERATION.**
- 8 I have the right TO A LIFELONG RELATIONSHIP WITH MY PARENT.**



**The New York Initiative for
Children of Incarcerated Parents**

The Osborne Association
www.osborneny.org


Bronx Office:
809 Westchester Avenue
Bronx, NY 10455
718-707-2600

Brooklyn Office:
175 Remsen Street, 8th Floor
Brooklyn, NY 11201
718-637-6560

Poughkeepsie Office:
25 Market Street, 6th Floor
Poughkeepsie, NY 12601
845-345-9845

Family Support Hotline:
800-344-3314



**The Osborne
Association** 
Transforming Lives, Communities,
and the Criminal Justice System