

LEGAL FACT SHEET

Summary of Kinship Navigator Factsheets and Resources Related to Deported Parents and the Care of Children

Kinship care refers to non-parents who are full time caregivers of children, without parents in the home. Most kinship care is provided by grandparents, aunts, uncles, adult siblings, and “fictive kin” who are non-blood relatives like domestic partners, godparents, and family friends. Most kinship care is Informal care, not foster care.

Informal Kinship Care can happen:

- 1.) Without parental consent and no court order – there is no parent available – parents disappear, are incarcerated, incapacitated, deceased, whereabouts unknown, or for similar reasons cannot provide consent; or
- 2.) With parent consent and no court order – parents are available – by agreement between the parent and caregiver in a writing with no court involvement; or
- 3.) With or without parent available and court order – via a consent decree pursuant to an order of custody, guardianship, or adoption or via a “third party” custody proceeding where the non-parent seeks court ordered custody or guardianship because of an extraordinary circumstance like, neglect, abandonment, incarceration (contested private adoptions require compelling circumstances).

No Formal Designation

Informal care with no parental agreement (no parent writing or no court involvement). Common law and statutory law recognize such care as a form of lawful custody. Sometimes referred to as “in loco parentis” (lawful custody without any order or parental consent, or with informal parental consent). NYS education law and public health law permit a “person in parental relationship” to reenroll a child in school, be responsible for education, and consent to immunization of children. McKinney Vento Homeless Assistance Act permits a “homeless” child to be enrolled in school. The Family Court Act permits a “destitute” child to enter foster care, although this statute is not used frequently. Of particular importance is a Department of Education regulation authorizing enrollment without court ordered custody or guardianship.

Other Pathways to Kinship Care

Other pathways to kinship care include parental affidavits, parental designation, Informal custody or guardianship actions, and foster care. Below are some relevant laws and resources:

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1.) Schooling – Enrollment – Immunizations

- McKinney Vento – Homeless Child: <https://www.nysnavigator.org/wp-content/uploads/Kinship-Children-who-are-Homeless-KN-1.pdf>
- School Enrollment: <https://www.nysnavigator.org/wp-content/uploads/Public-School-Enrollment-KN.pdf>
- Education Law - Who may enroll: https://www.nysnavigator.org/wp-content/uploads/NYSEd_Reg-1.pdf
- Custodial Affidavits: <https://www.nysnavigator.org/wp-content/uploads/How-to-Fill-Out-a-Custodial-Affidavit-KN.pdf>
- Immunizations - Public Health Law 2164: <https://www.nysnavigator.org/wp-content/uploads/Immunization-No-Parent-Available.pdf>

2.) Parental Designations

- Powers available without court order:
 - Parental Designation – Gen. Obligations Law
 - 1 Month: <https://www.nysnavigator.org/wp-content/uploads/Parental-Designation-of-Childrens-Caregiver-Thirty-Days-or-Less.pdf>
 - 12 Months – <https://www.nysnavigator.org/wp-content/uploads/Designation-of-Person-in-Parental-Relationship-12-Months-OCFS-4940-1-1-2.pdf>

3.) Notarizing Documents in Foreign Countries: <https://www.nysnavigator.org/wp-content/uploads/Notarization-of-Documents-in-a-Foreign-Country.pdf>

4.) Standby Guardianship

- Who Many Name a Standby: <https://www.nysnavigator.org/wp-content/uploads/Designation-of-Standby-Guardianship-KN.pdf>
- Designation Form: <https://www.nysnavigator.org/wp-content/uploads/Designation-of-Standby-Guardianship-BLANK-FORM-Fillable-Form.pdf>

5.) Court Orders – Custody & Guardianship

- Family Court Act - Article Six Petitions (custody or guardianship) or Surrogate’s Court Procedure Act
- Custody versus Guardianship: <https://www.nysnavigator.org/wp-content/uploads/Informal-Custody-Legal-Custody-Guardianship-KN-1.pdf>

6.) Comparisons – Procedures, Powers, Access to Records for Informal Custodians, Legal Custodians, Guardians

- Procedure: <https://www.nysnavigator.org/wp-content/uploads/Enabling-New-Yorks-Kinship-Caregivers-Custody-Guardianship-Parental-Designation-Basic-Procedure.pdf>
- Powers: <https://www.nysnavigator.org/wp-content/uploads/Kinship-Caregivers-Comparison-of-Custody-and-Guardianship.pdf>
- Access to Vital Documents: <https://www.nysnavigator.org/wp-content/uploads/Caregivers-Rights-With-Respect-to-Obtaining-Vital-Documents.pdf>

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7.) Foster Care

- Voluntary Placements Agreements (foster care, constructive removals, caregivers approval as foster parents):
- <https://www.nysnavigator.org/wp-content/uploads/Voluntary-Placements-Agreements-%E2%80%93-Placement-in-Kinship-Homes-KN.pdf>
- <https://www.nysnavigator.org/wp-content/uploads/Foster-Care-Relative-Placements-Overview-KN.pdf>
- Destitute Child - SSL 358-a, 384-b
- Surrenders - SSL 358-a, SSL 384

8.) Applications for Documents, Records, Benefits

- Documents:
 - Obtaining Birth Certificates: <https://www.nysnavigator.org/wp-content/uploads/Birth-Certificates-KN-1.pdf>
 - Passports: <https://www.nysnavigator.org/wp-content/uploads/Passports-for-Minor-Children-KN-1.pdf>
 - Social Security Cards: <https://www.nysnavigator.org/wp-content/uploads/Getting-a-Social-Security-Number-Card-for-a-U.S.-Citizen-who-is-a-Minor-KN-1.pdf>

9.) Public Benefits: <https://www.nysnavigator.org/wp-content/uploads/Public-Benefits-and-Non-Parent-Caregiver-Grant-FINAL.pdf>

- Applications Form – Who May Apply: <https://www.nysnavigator.org/wp-content/uploads/Who-May-Apply-for-Benefits-and-What-is-Required-KN.pdf>

10.) Youth Immigration Status:

[http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20\(SIJS\).pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20(SIJS).pdf)

For further information on kinship law, legal resources, kinship policy, and county resources, see menus at www.nysnavigator.org

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.