

LEGAL FACT SHEET

The State and County's Affirmative Duties to Inform and Assist Relatives in Pursuing Caregiving Options

1.) Certain publications must be provided to relatives considering caring for children who have been removed from their parents.

- “Having a Voice and a Choice: New York State Handbook for Relatives Raising Children” – 85 pages long. Can be found at: <http://www.ocfs.state.ny.us/main/publications/Pub5080.pdf>
- “Know Your Options: Relatives Caring for Children” – smaller booklet. Can be found at: <https://ocfs.ny.gov/main/publications/Pub5120.pdf>
- “Know Your Permanency Options: The Kinship Guardianship Assistance Program” – must accompany handbook in situations where handbook is required. Can be found at: <https://ocfs.ny.gov/publications/pub5108.pdf>
- Local Department of social services (LDSS) should provide these to the caregiver

2.) Prior to Removal - LDSS is required to attempt to locate a relative or family friend prior to foster care placement. See 18 NYCRR § 430.10(b)(2).

- “The district shall... attempt prior to the placement of a child in foster care to locate adequate alternative living arrangements with a relative or family friend which would enable the child to avoid foster care placement, unless the child is placed as a result of a court order or surrender agreement...”

3.) After Removal – LDSS Required to Search for Suitable Relatives

- FCA § 1017(1) and SSL § 384-a require that the Court direct the LDSS to conduct an immediate investigation to locate any “relatives of the child, including all of the child’s grandparents, all suitable relatives... and any relative who plays or has played a significant positive role in [the child’s] life...”
- Any contacted relative must be told they can ask to become a foster parent or to assume care privately and that if the family does not assume care, there is a likelihood of adoption by the foster parents.
- 18 NYCRR 430.11(c)(4) – within 30 days after removal the LDSS must exercise due diligence in identifying all of the child’s grandparents or other adult relatives and providing them with notification that the child has been or is being removed and which explains the options under which the grandparents or other relatives may provide care of the child, either through foster care or direct legal custody or guardianship. Relatives with a family history of domestic or family violence are exempted. Efforts to identify and notify relatives must be recorded in the child’s uniform case record

LEGAL FACT SHEET

4.) Emergency Approval for Foster Care Certification

- 18 NYCRR 443.7 – allows for emergency foster home certification of a relative (or eligible non-relative including a child’s godparent, neighbor, family friends or adult with a positive relationship with the child) when the child has been temporarily removed or taken into protective custody due to suspected abuse or neglect
- LDSS must obtain a signed statement from the caretaker indicating willingness to provide foster care and perform an expedited home study. Emergency certification lasts for 90 days, with expectation that final certification will be completed within that time period.
- FCA § 1017(2)(iii) – requires that where the Court determines that the child may reside with a suitable relative, LDSS is directed to place the child with such relative and must commence an investigation of the home within 24 hours and thereafter approve such relative or other suitable person, if qualified, as a foster parent.
- SSL §384-a - requires LDSS to identify all suitable relatives who have played a significant positive role in the child’s life and inform them of the opportunity for becoming foster parents.

5.) Application of a Relative to Become a Foster Parent – FCA §1028-a

- If a child has been placed in non-relative foster care and a relative indicates a willingness to become the foster parent and has not previously refused to be considered (absent a good reason) the relative is entitled to a hearing to determine whether the child should be placed with the relative as a foster parent.
- “Relative” is defined as being within the third degree of consanguinity to either parent.

6.) Federal Law Mandates State Compliance – See 42 USCA § 671(a)(29), entitled State Plan for Foster Care and Adoption Assistance

- In order for a state to be eligible for federal foster care payments, the State must have a plan which mandates the following:
 - Within 30 days after the removal of a child from the custody of the parent or parents of the child, the state shall exercise due diligence to identify and provide notice to the following relatives: all adult grandparents, all parents of a sibling of the child, where such parent has legal custody of such sibling, and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that--(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child; (B) explains the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice; (C) describes the requirements under paragraph (10) of this subsection to become a foster family home and the additional services and supports that are available for children placed in such a home; and (D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under [section 673\(d\)](#) of this title to receive the payments;

LEGAL FACT SHEET

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.