

Understanding Your Rights as a Relative When a Child Has Been Removed from Parents

*A Brochure for Grandparents and
Other Non-Parents Caring for Children*

**NEW YORK CITY KINCARE TASK FORCE
2013**

What Are the Differences Between Kinship Foster Care, Direct Placement, and Legal Custody/Guardianship?

Kinship Foster Care

In a kinship foster care arrangement, the child will live with you in your home and you will be the child's certified or approved foster parent. The foster care agency with which the child is placed ("the agency") keeps legal custody of the child. You will have the right to make some small decisions for the child, but the consent of the parent and/or agency is needed for medical and other decisions. You must cooperate with the agency, the parents, and the family court. You will receive foster care payments. See the section below that discusses the certification and approval process to become a kinship foster parent.

Direct Placement

The Family Court will issue an order directly placing a child in your home while an Article 10 (child abuse and neglect) case is ongoing in family court against a parent. This placement will last only as long as the Article 10 case is continuing in family court. The Administration for Children's Services (ACS) will supervise the placement of the child in your home and a caseworker will work with you throughout the case. You will not receive foster care payments. You may apply for a form of cash assistance called a non-parent caregiver grant from your local de-

partment of social services or in New York City, the Human Resources Administration (HRA). If a child is placed directly in your care and you wish to become a kinship foster parent, notify the agency immediately.

Legal Custody/Guardianship

You will file a petition in court to become the legal custodian or guardian. If the court grants your petition and issues a final order of custody or guardianship, there will be no further cases in court. You will be able to make medical and educational decisions for the child. However, the parents keep their parental rights and can file a petition in family court asking for the return of the child or for visitation. You may apply for a form of cash assistance called a non-parent caregiver grant from your local department of social services or in New York City, the Human Resources Administration (HRA).

For more details on all of the above options, see: *Having a Choice and a Voice, The New York State Handbook for Relatives Raising Children*, www.ocfs.state.ny.us/main/publications/Pub5080.pdf and the New York State Kinship Navigator website: www.nysnavigator.org or you can contact the Kinship Navigator at 877-454-6463.

What Is the Process to Become a Certified Kinship Foster Parent?

To become a kinship foster parent, you must be approved as a foster parent. If you would like to become a kinship foster parent, tell the agency caseworker immediately.

You must be related to the child by blood, adoption, or marriage within the third degree (such as a sibling, aunt/uncle, grandparent, or great-grandparent) to become an approved kinship foster parent. However, if you wish to care for a relative and you do not fall within any of these categories, you can apply to be a non-kinship foster parent but you must go through the foster parent certification process.

To qualify as a kinship foster parent, you must be over the age of 21, of any race, religion, or sexual orientation. You can be male or female, single or married. You do not have to be employed, but you must have a legal source of income, such as public assistance or Social Security. You do not have to own your own home, but you do have to have a safe, suitable place for the child to live.

Approval as a kinship foster parent involves the following steps:

Home Study

A case worker will come to your home to ensure that it is a safe and appropriate space for the child to live. All household members will be interviewed and must provide documents to verify identity.

Criminal History and Child Abuse History Checks

Every person over 18 living in the household must be fingerprinted and a state and national criminal history check will be run. There will also be a search for cases of abuse and neglect in New York State (and any other state you or other household members have lived in the last five years).

Medical Report

During the home study, the case worker will usually request a medical history report from a health care provider.

Reference Checks

You must provide references describing your care-taking abilities.

Foster Parent Training

Usually, you are required to attend foster parent training. The training helps improve and enhance

parenting skills and teaches you how to help a child adjust to a new home. The training teaches about the rights and responsibilities of a foster caregiver. Each year the agency will conduct a review in order to renew your approval as a foster parent.

What Assistance Can ACS Offer Me in Becoming a Kinship Foster Parent?

- When placing the child with a relative, the family court has the authority to order the home study be expedited (done quickly).
- A case worker should not disqualify you solely

based on a lack of resources such as not having a bed for the child. If the home has space for a bed but you cannot purchase one, ACS can provide a bed for the child.

Should I Be Aware of Any Time Limits?

- The longer you wait once a child is already in foster care, the more difficult it may become to be the child's kinship foster parent. If the child is placed in the home on an emergency basis, the certification or approval must be completed within 90 days.
- A parent has the right to a court hearing within three days of a child being removed under an Article 10 (child abuse and neglect) petition. This is called a "1028 hearing." At this hearing, the agency must prove in court that the child would be at imminent risk if returned to the parent. If the agency loses this hearing, the child will be returned to the parent's care.
- If you notify the agency that you want to become a kinship foster parent as soon as you receive notice that the child is in foster care and your request is denied, you may be entitled to a 1028-a hearing. The requirements to file for a 1028-a hearing are:
 - 1) The application for this hearing MUST be made within 6 months of the date you were notified that the child was removed from his home, and NO LATER than 12 months from the date the child was removed.
 - 2) You are related to either of the child's parents by blood, adoption, or marriage within the third degree (such as a sibling, aunt/uncle, grandparent, or great-grandparent).
 - 3) The child was removed and placed in the care of a non-relative.
 - 4) You have not previously refused to be considered a foster parent to the child. However, an inability to provide immediate care for the child due to lack of resources or inadequate housing, educational or other arrangements necessary to care appropriately for the child shall not be counted as a previous refusal.
 - 5) The social services district refused to place the child in the your care for reasons other than what is required to become a foster parent.
 - 6) If the court determines that placement with the relative is in the child's best interest, a home investigation begins within 24 hours and approval as a foster parent is expedited (done quickly).

What Are My Rights to Visit a Child in Foster Care?

- ACS is required to tell grandparents and relatives when a child is placed in foster care.
- Grandparents should tell the agency that they want to visit with their grandchild. If the foster parent is not allowing visits, the grandparent should tell the case worker from the agency.
- Grandparents have the right to file a petition in court to request to have regular visits with a grandchild in foster care. Under the law, other relatives (except siblings) do not have a right to file for visitation.
- If a parent does not consent to the visitation, the

grandparent still may have the right to a court hearing to decide if visitation is in the best interest of the child if the grandparent can first prove that he/she has "standing." For more information on

what you need to prove to get a court order of visitation, see the New York Kinship Navigator website: www.nysnavigator.org or you can contact the Kinship Navigator at 877-454-6463.

What Is "KinGAP" and Who Is Eligible for the Program?

- The Kinship Guardianship Assistance Program (KinGAP) allows eligible kinship foster parents to become a child's legal guardian. The program provides financial support and medical assistance to those who qualify. Under KinGAP, the child would continue to reside with a relative outside of foster care and adoption.
 - You may be eligible for KinGAP if all of the following requirements are met:
 - 1) The child is under 21 years old and you are currently the child's foster parent;
 - 2) The child has resided with you for a minimum of six consecutive months, and you have been a fully certified or approved foster parent during that time;
 - 3) You are related to the child by blood, marriage or adoption;
 - 4) The child has shown a strong attachment to you and you have a strong commitment to caring for the child on a permanent basis;
 - 5) It has been determined that there are compelling reasons that neither returning to the parent nor adoption is in the child's best interests;
 - 6) Age appropriate consultation is held with the child and any child age 14 years or older must be consulted on the kinship guardianship arrangement. Youth 18 or over must sign a written consent to the kinship guardianship arrangement.
 - 7) The initial permanency hearing must have taken place in Family Court;
 - 8) A fact finding hearing must have been completed if a child was removed due to abuse or neglect; and
 - 9) Criminal history record checks and Statewide Central Registry checks must be completed for you and for anyone 18 and over residing in the home.
- To learn more about the program, or if you feel you may qualify for the program, please contact your foster care agency.

We Can Help!

Please call one of the following organizations for more information about your rights when a relative child has been removed from parents:

MFY Legal Services, Inc.
212-417-3850 (Citywide)

JBFCFS Kinship Care Program
718-676-4251 (Brooklyn)

Bridge Builders Community Partnership
718-293-4352 (Bronx)

The Brookdale Foundation Group
201-346-1244 (State-wide)

The Family Center
718-230-1379 (Citywide)

JASA
212-273-5272 (Bronx)

Lutheran Social Services of NY
718-558-3993 (Queens)

New York Council on Adoptable Children
212-475-0222 (Citywide)

New York State Kinship Navigator
877-454-6463 (Statewide)

New York State Office of Children and Family Services <http://ocfs.ny.gov/kinship/map.asp>

The Osborne Association's Family Resource Hotline: 1-800-344-3314 (City-wide for families affected by the criminal justice system)

Presbyterian Senior Services
718-620-1262 x 1212 (Bronx)

New York City Department for the Aging's Grandparent Resource Center
Call 311 (Citywide)

Caregivers are advised that the information in this brochure is not intended as legal advice. Caregivers should consult an attorney regarding their rights and options.