

## LEGAL FACT SHEET

### When a Child is Removed – Duty to Locate and Notify Relatives of Their Options for Care

#### Summary

When a county department of social services decides to remove a child from a parent's home, a court proceeding, referred to as an Article Ten, must be initiated in Family Court. The law then requires that certain persons, including grandparents and relatives, be notified about the proceeding, and informed of their opportunities to become caregivers, including becoming foster parents.

The below discussion details many of the important laws and regulations about the search for relatives and about what information must be provided to them. For more information, contact the Kinship Navigator and *see* Navigator Fact Sheets, "The State And County's Affirmative Duties To Inform And Assist Relatives In Pursuing Caregiving Options" and "Relatives And Family Friends Seeking To Become Caregivers Of Children In State Care". For a more comprehensive review of Article Ten proceedings, *see* [OCFS's Child Protective Services Manual Chapter 9](#).

#### Acronyms and Abbreviations Used in this Fact Sheet

This Fact Sheet cites New York statutes (laws) which are mainly found in sections of the Family Court Act (FCA) and the Social Services Law (SSL); regulations which are found in the NYS Code of Rules and Regulations part 18 (18 NYCRR), and administrative directives, called Administrative Memorandum (ADM), OCFS child welfare manuals, guides, and informational booklets, which are available at the website of the Office of Children and Family Services (OCFS). It presents a more complete review of applicable law than the Kinship Navigator Fact Sheet, "The State And County's Affirmative Duties To Inform And Assist Relatives In Pursuing Caregiving Options".

#### Child Protective Services Duties When a Child is Removed

When a child is removed from a parent's home, the local department of social services must start an Article Ten abuse/neglect proceeding in Family Court. [FCA §1017](#) is the primary statute describing the obligations of the department and the Court. The statute is very detailed and should be reviewed in full. Here are some key requirements:

The "local commissioner of social services must:

- "conduct an immediate investigation to locate any non-respondent parent... any relatives ..., including all of the grandparents, all relatives ..."
- "shall inform them in writing of the pendency of the proceeding and of the opportunity ...for relatives to seek to become foster parents or to provide free care under this article or to seek custody pursuant to article six of this act..."
- "shall report the results of such investigation, or investigations to the court and parties, including the attorney for the child..."
- "shall also record the results..."

Additionally, FCA 1017 described the court's duties, including:

- "shall determine whether there is a ...relative or suitable person with whom such child may appropriately reside,"
- "in the case of a relative or suitable person, whether such individual seeks approval as a foster parent..., or wishes to provide free care...."

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The above statutory excerpts highlight the importance of [FCA §1017](#), which should be read in full to understand its provisions. For information on the three options, see the Kinship Navigator Fact Sheet “Relatives and Family Friends Seeking To Become Caregivers Of Children In State Care”.

In addition, various OCFS regulations and ADM’s add specific actions that local departments must perform. An OCFS regulation requires that within 30 days after the removal of the child, or earlier if ordered by the court or required by SSL §384-a, the local department of social services exercise due diligence to identify the child’s relatives (18 NYCRR 430.11(c)(4)). The regulation identifies who should be searched.

### Who Should be Notified

Family Court Act §1017(a) provides statutory language similar to 18 NYCRR 430.11(c)(4). It states who must be notified:

“[A]ny non-respondent parent of the child and any relatives of the child, including all of the child’s grandparents, all relatives or suitable persons identified by any respondent parent or any non-respondent parent and any relative identified by any respondent parent or any non-respondent parents and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life. The local commission shall inform them in writing of the pendency of the proceeding and of the opportunity for non-respondent parents to seek temporary release of the child under this article or custody under article six of this act or for relatives to seek to become foster parents or to provide free care under this article or to seek custody pursuant to article six of this act, or for suitable persons to become foster parents or provide free care under this article or to seek guardianship pursuant to article six of this act.”

### Who is a Relative?

18 NYCRR 443.1 and 443.7 define who are relatives: “any adult related to the child’s parent or stepparent through blood, marriage, or adoption to any degree of kinship, and an adult with a positive relationship to the child or the child’s family including, but not limited to, a child’s godparent, neighbor, or family friend, or who is an unrelated person where placement with such person allows half siblings to remain together in an approved foster home, and the parents or stepparents of one of the half siblings is a relative of such person.” This definition of relative now includes persons other than blood relatives and the search now uses the more expansive definition.

The same definition is also found in the Kinship Guardianship law, SSL §458-a, in FCA §1028-a, and in SSL §371(22) which defines who is a kinship caregiver (Legislative bills A.3496/S.54, signed into law on July 21, 2021 as Chapter Law 246). With the 2021 enactment of the definition, it is now accurate to consider non-parent relatives and “kin” as words that represent the same target population in relation to the Article Ten search and notice provisions.

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### OCFS Requires a “Thorough” Search for Relatives and Suitable Persons

Family Court Act §1017(a) states that the court should direct the local department to perform the search and to inform about custodial options, including foster care. The duty to search for relatives is especially important and must be done vigorously. A recent Office of Children and Family Services administrative directive emphasizes that a thorough search must be performed and supervisory oversight must include a second review in order to ensure relatives are found, 20-OCFS-ADM-18 “Kin-First Firewall Practice” and [Kin-First Firewall FAQ](#).

### The Preference for Placement with Relatives is Still Discretionary – There’s No Right to Become a Caregiver

Numerous child welfare laws and regulations express the preference for relatives to become foster parents. Examples of the preference for kinship placement are found in FCA §1017, FCA §1027(b)(i)(A)) and SSL §384-a(2)(h)(ii).

However, the preference for placement with a relative is discretionary and is limited by the successful location of a relative, then ability of the relative to qualify as a foster parent, and considerations of the child’s best interests. In sum, relatives do not have a right to care for children, they must be found suitable and chosen by the state. There is no presumption that relative placement is in a child’s best interests.

Non-related foster parents also have a preference once children have lived in their homes for 12 months or longer. They are to be given a “preference and first consideration” for adoption, in the event that the child becomes eligible for adoption (SSL §383 [3]).

### Duty to Inform Relatives and Suitable Person about their Options – Information Must be Provided in “Writing”

A 2018 ADM requires that two booklets be given to notified persons when *a child is removed*. 18 OCFS ADM 23, on page 4 Part IV, states what publications must be provided and when:

- **“At the time an identified person is notified of a child’s removal**
  - *Know Your Options: Kin Caring for Children* (Pub. 5175)  
<https://ocfs.ny.gov/main/publications/Pub5175.pdf>
  - *Make an Informed Choice: Kin Caring for Children* (Pub. 5120)  
<https://ocfs.ny.gov/publications/OCFS-Pub5120.pdf>
- **At the time a caregiver chooses to become a foster parent and when a child’s foster care placement changes**
  - *Know Your Permanency Options: The Kinship Guardianship Assistance Program* (Pub. 5108)  
<https://ocfs.ny.gov/publications/pub5108.pdf>

The duty to inform is further emphasized in the recently amended SSL §392, which requires certain information to be provided in writing by local departments of social services public assistance and child welfare offices. A joint ADM publication by OCFS and the Office of Temporary and Disability Assistance (OTDA) explains how to implement SSL §392. The ADM, 20-OCFS-ADM-05, “Requirement to Make Information Available to Nonparent Caregivers Relating to Available Services and Assistance Programs,” requires the distribution of a booklet, “Know Your Resources: Nonparent Caregiver Benefits” to be given to every current or potential kinship caregiver.

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Together these two ADM's strongly emphasize the local department's legal duty to provide written information.

Here are links to the required publications:

- [Know Your Resources: Nonparent Caregiver Benefits \(Pub. 5194\)](#)
- [Know Your Options: Kin Caring for Children \(Pub. 5175\)](#)
- [Make an Informed Choice: Kin Caring for Children \(Pub. 5120\)](#)
- [Know Your Permanency Options: The Kinship Guardianship Assistance Program \(Pub. 5108\)](#)

Additionally, the Family Court itself is required to provide written notice to located relatives about the proceeding, their options for care, and their right to be heard. The NY Courts website has the notice form which must be sent to relatives – [form 10-7e](#). The form clearly states that the relative (kin) has a right to be heard, and that they may “seek to be approved as a foster parent”, or to temporarily provide care via the direct placement of the child by the department, or to start an Article Six custody or guardianship petition.

### Some Departments May Facilitate Emergency Kinship Foster Parent

Once a relative is located, they can quickly assume care by becoming an “emergency foster parent”. The rules are found in [20-OCFS-ADM-08 “Approval of Emergency Foster Boarding Homes and Expanded Waiver Authority”](#) and in 18 NYCRR 443.7. However, the local department is not obligated to help relatives become emergency foster parents. Some departments will and others will want the relative to go through the foster parent certification process before placement. Unfortunately, while the court can order foster care placements (FCA §1017(3)(a)(iii)), the statute does not grant the court the authority to order emergency foster care placements (*In re Jermaine H.*, 79 AD3d 1720 (4<sup>th</sup> Dept 2010); 26 Misc. 3d 891 (2009)).

### What are the Three Options for Care?

As stated in FCA §1017 and explained in the OCFS booklets and Family Court [form 10-7e](#), there are three options for care: 1) foster care (if qualified), 2) “direct” custody (which is temporary custody subject to the jurisdiction of the Article Ten proceeding, but without the supports provided by foster care), and 3) Article Six custody/guardianship (which is private care, also without the supports provided by foster care). For a fuller explanation of these options and of the Kinship Guardianship Program (KINGAP) (which offers a subsidy to kinship foster parents after exiting foster care), *see* the Kinship Navigator Fact Sheet, “Relatives And Family Friends Seeking To Become Caregivers Of Children In State Care”.

### Courts Duty to Inquire

Along with the preference and the search/inform requirements, Family Court judges are required to order the local department of social services to search for relatives and to inquire regarding the results of the department's search and whether any relatives wish to provide care, including foster care, and upon completion of the court's inquiry to order a child placed with a suitable relative either via one of the three options - foster care, “direct” custody (Article Ten), or private custody (Article Six). The duty is stated in FCA §1017, §1027, and SSL §384-a.

It is important to recognize that the local social services department must report to the court on its findings, and the court must then ask any relative who appears in court whether the relative wishes to provide care.

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### What if the Requirements are not Followed?

If relatives, absent parents, and other suitable prospective caregivers were not located, or did not receive notification, or did not receive required information about their options, or were misled about their opportunities, there are legal remedies that may provide them with opportunities to provide care. In other words, legal “remedies” may be available when the search and information were not properly done, *see* Fact Sheets on FCA §1028-a and “When a Child is Removed and Relatives are Not Located or Not Notified of Their Options for Care”.

### Conclusion

NYS statutes, regulations, and OCFS Administrative Directives describe the duties of the local departments of social services when a child is removed from a parent’s home. One essential requirement is to search for and inform relatives of their options to provide care, including foster care. The court too has a duty to inquire and ensure kin know their options.

Notified relatives who are suitable caregivers should be free to choose how to care, and knowing what laws and regulations govern the department of social services and the court’s legal obligations are important safeguard to making the best choice for care. If relatives were not notified or not properly informed, they may have to advocate to become a caregiver. *See* the companion Fact Sheet “When a Child is Removed and Relatives are Not Located or Not Notified of Their Options for Care”.

Updated September 28, 2021. 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 Family Center 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 Family Center program, funded by the New York State Office of Children and Family Services. Catholic Family Center 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.