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Know Your Options:  
**Relatives Caring  
for Children**

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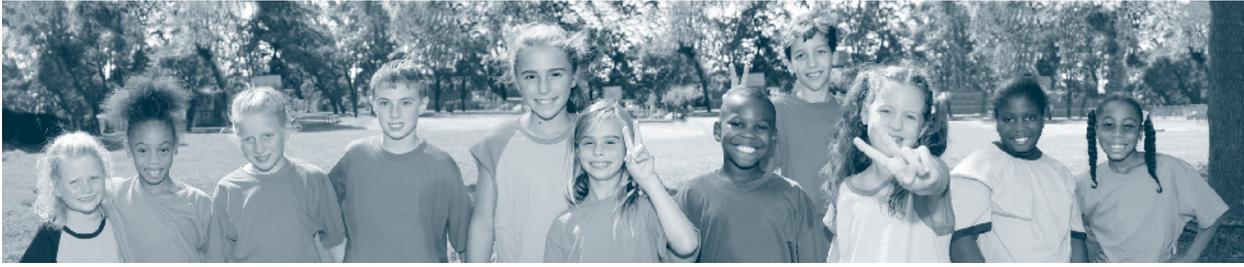
*Fully understanding their  
options is the best way for  
relatives to have a  
voice and a choice.*



New York State  
Office of  
Children and Family  
Services

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## When Relatives Care for Children

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Sometimes children need to be placed in the care of a relative because they cannot stay home with their parents. Because of concerns about the child’s safety, or for other reasons, the child’s relatives may be asked if they can provide a temporary home, a home that is safe, stable, and nurturing. When the local child welfare agency decides to remove a child from the home, the agency must notify relatives and ask if they are interested in caring for the child. In New York State, the child welfare agency is usually the county Department of Social Services (DSS). In New York City it is known as the Administration for Children’s Services (ACS). In this brochure, “the agency” means the local child welfare agency.

## Options for Relatives Caring for Children

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When the agency contacts the relatives of a child in need of care, the agency must inform the relatives of their options. Any relative who is thinking about caring for a child should ask the caseworker what the options are and how much time there is to decide. A relative may also get independent advice from an attorney or contact a kinship program (see “For More Information” on page 2).

The agency and the Family Court are allowed to place children in the home of a relative temporarily while the relative decides on an option. However, local child welfare agency and court practices may not favor placement with a relative until an option is chosen. In all cases, the agency and the court will need to know that the relative’s home is safe and that the relative is a suitable person to become a caregiver for the child.

**Note:** When a relative decides not to care for a child, the child may be placed with another relative or with unrelated foster parents. If the parents’ rights are terminated later, the child may be freed for adoption, and the person with whom the child has been living for the past 12 months will generally be preferred as the adoptive parent.

This brochure briefly describes the options available to relatives who wish to care for a child who is placed outside of the home due to child welfare involvement. There are three placement options: (The options for a noncustodial parent are different from those described here.)

- A. Direct Placement (N-docket custody)(Child Protective Proceeding)
- B. Legal Custody or Guardianship
- C. Relative (Kinship) Foster Care

It also includes some information about delaying or changing the decision to become a caregiver and about two permanency options that may become available at a later date:

- Adoption
- Guardianship with Kinship Guardianship Assistance Program (KinGAP)

It's important that relatives fully understand their options and the level of support and obligations that come with each option, as decisions made at the onset when child welfare is first involved will impact the future placement or permanency options available to them. Relatives need to consider the needs of the child and whether or not they will need the additional support that being a foster parent provides to adequately care for the child or if they have the resources to care for the child on their own.

## For More Information

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The handbook, **Having a Voice & a Choice: NYS Handbook for Relatives Raising Children**, has detailed information about these options and helpful resources for relatives. You may find a copy online at the website of the NYS Office of Children and Family Services (OCFS): <http://ocfs.ny.gov/main/publications/Pub5080.pdf>. A copy of the handbook must be given to each relative who is notified of a child's protective removal and need for placement if the relative is considering caring for the child. A copy of the handbook must also be given to a relative who expresses interest in becoming the foster parent of a child already in foster care. Ask the caseworker if you have specific questions about your situation.

In addition to the handbook above, relatives should be given the supplemental booklet on the Kinship Guardianship Assistance Program, Know Your Permanency Options: **The Kinship Guardianship Assistance Program (KinGAP)**, which has detailed information about this option. A copy of the KinGAP booklet is also available on the OCFS website at <http://ocfs.ny.gov/kinship/guides.asp>.

**Support for Relatives:** OCFS has a section of their website devoted to kinship caregiver information, including information about the Kinship Guardianship Assistance Program (KinGAP), which can be found at <http://ocfs.ny.gov/kinship/default.asp>.

For help in finding a kinship program and resources for relatives, call the **New York State Kinship Navigator** at (877) 454-6463, or visit the website at [www.nysnavigator.org](http://www.nysnavigator.org). Certain private agencies may have support groups or offer other services for relatives caring for children.

### Contact Information:

Child Welfare Caseworker: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Supervisor: \_\_\_\_\_

Phone Number: \_\_\_\_\_

## Placement Options

### Option A: Direct Placement (N-docket custody)

1. In this option, the child is removed from the home (protective removal) and placed with the relative by the Family Court as a part of an abuse or neglect case (Article 10 of the Family Court Act). This is often referred to as a “direct placement.” The relative is given temporary physical and legal custody of the child. The temporary custody may last as long as there is an Article 10 case before the Family Court. It may end at an earlier point in the Article 10 proceeding depending on the status of the case.
2. The relative may apply for a non-parent caregiver grant (also known as a “child only” grant) from the agency’s Temporary Assistance (TA) office.\* This benefit is generally available to all non-parent caregivers and includes Medicaid for the child. To receive the full grant, the non-parent caregiver must agree to cooperate with efforts to collect child support from the child’s parent(s) unless seeking child support may result in harm to the relative or the child.
3. Public benefits, such as food stamps and heating assistance (HEAP), may be available for the non-parent caregiver’s household through the agency’s TA office or HRA. Other helpful benefits may include Women, Infants, and Children (WIC) nutrition assistance (for children under the age of five) and reduced or free lunch at school. If they work, relatives may apply for help with child care costs. Some children may qualify for Social Security benefits, based on the child’s disability and the earnings of the child’s parents. Relatives also may be eligible for child-related tax credits.
4. At first, it is likely that the child’s long-term goal, known as the “permanency goal,” will be to return home. That goal could change if the parent does not show progress in dealing with the issues that led to the child’s placement. In some cases, a relative may adopt, apply for an order of custody that is not subject to periodic court review, or may become the child’s guardian (See Option B).
5. The Family Court will periodically review the case of a child placed under Article 10 at a permanency hearing, and the agency will supervise the parent, child, and relative caregiver until the child is returned home or another plan for permanency is achieved. The agency must provide written permanency hearing reports to the Family Court eight months after removal and every six months thereafter. The relative caregiver will receive a copy of each report and will be invited to each of the permanency hearings.
6. If the parent decides to surrender his or her parental rights, the Family Court terminates the parental rights, or the parent dies, the relative may file a petition to adopt the child but will not be eligible for an adoption subsidy. Alternatively, the relative may file a petition in court to become the child’s permanent guardian, but no subsidy is available for this option either, as the relative would not qualify for KinGAP assistance because he or she was not the child’s relative foster parent.

\* In New York City, the Human Resources Administration (HRA).

## Option B: Legal Custody or Guardianship

1. In this option, the relative must file a petition in court asking for custody or guardianship of the child (Article 6 of the Family Court Act). If the relative can prove that extraordinary circumstances exist to place the child outside of the parent's custody, or if the parent consents, the relative will be awarded custody or guardianship of the child. In a case where a child has been placed outside of the home because of abuse or neglect, extraordinary circumstances usually means that the parent cannot safely care for the child.
2. This option is different from a direct placement discussed in Option A because there is no routine, ongoing court involvement after the court issues an order of custody or guardianship because this is viewed as a long-term plan for the child. There is also no ongoing involvement or oversight by the child welfare agency.
3. The relative caregiver may apply for a non-parent caregiver grant (also known as a "child only" grant) from the agency's Temporary Assistance (TA) office. This benefit is generally available to all non-parent caregivers and includes Medicaid for the child. To receive the full grant, the non-parent caregiver must agree to cooperate with efforts to collect child support from the child's parent(s) unless seeking child support may result in harm to the relative or the child.
4. Public benefits, such as food stamps and heating assistance (HEAP), may be available for the non-parent caregiver's household through the agency's TA office or HRA. Other helpful benefits may include Women, Infants, and Children (WIC) nutrition assistance (for children under the age of five) and reduced or free lunch at school. If they work, relatives may apply for help with child care costs. Some children may qualify for Social Security benefits, based on the child's disability and the earnings of the child's parents. Relatives also may be eligible for child-related tax credits.

5. In this option, the child is *not* in foster care, and the relative is not eligible for relative (kinship) foster care payments, which is generally more than the non-parent caregiver grants available with this option. If the child later becomes free for adoption, the relative will not be eligible for adoption subsidy payments. In addition, because kinship foster care is a pre-requisite for KinGAP, the relative would *not* qualify for KinGAP assistance if they selected this option.
6. The child's parent still has parental rights and may seek visitation with the child or may later file a petition to regain custody of the child.
7. The relative caregiver may be eligible for preventive services from the agency.

## Option C: Relative (Kinship) Foster Care

1. In this option, the local department of social services has care and custody or guardianship and custody of the child and the child is placed with the relative in a foster care placement where the relative is either a certified or approved foster parent. The kinship foster parent/relative receives foster care payments (see #5 on page 5) and other supports from the child welfare agency.
2. The relative may have a very limited time period to decide whether to become a kinship foster parent. The relative should ask the agency caseworker how much time there is to decide.
3. To become a kinship foster parent, the relative must be certified or approved as a foster parent. The relative and all family members living in the home age 18 or over must undergo background checks. These checks include (a) a criminal history record review in New York State and nationally through the FBI; (b) a child abuse/ maltreatment history clearance in New York State and any other state in which the relative or any family members age 18 or over have lived in the previous five years; and (c) for foster homes certified or approved after June 30, 2013, a review of the Staff Exclusion List (SEL)

database maintained by the New York State Justice Center for the Protection of People with Special Needs. Other requirements include a medical exam for the caregiver/family and a home inspection to determine that the relative has safe and appropriate housing. Usually the agency will require that anyone wishing to be a foster parent attend foster parent training. Each year the agency will conduct a review in order to renew the relative's approval as a foster parent.

4. A child may be placed with a kinship foster parent on an emergency basis, pending full agency approval or certification of the relative. A caseworker will visit the home to determine if the relative is willing to care for the child, make sure it is safe for the child, and obtain information for the approval process.
5. This is the *only* option where the relative receives foster care payments. Kinship foster parents also receive a clothing allowance for the child and may receive certain other special payments, such as a diaper allowance for a young child and/or school-related expenses for an older child. Foster care payment rates may be higher if a child meets certain criteria or has special needs. Foster parents are required to have extra training each year if any child placed with them receives a special or exceptional rate.
6. The foster care payments may not arrive right away, but payments are retroactive to the date of placement. The agency will send a notice about the foster care rate to the foster parent within 30 days of placement.
7. Foster parents also may be eligible for child-related tax credits.
8. The kinship foster parent works in partnership with the agency and is expected to cooperate with the agency in regards to the care of the child, including any services that the child may need, expect the caseworker to visit the child and the home, follow the child's visitation plan (even if it limits contact between the child and his/her parent), and meet regularly with the child's caseworker.
9. Any visits between the child and the parent must be approved by the agency and must comply with any orders of the Family Court.
10. The Family Court will periodically review the case of a child placed in foster care at a permanency hearing. The agency must provide written permanency hearing reports to the Family Court eight months after removal and every six months thereafter. The kinship foster parent will receive a copy of each report and will be invited to each of the permanency hearings and have a right to be heard in such proceedings.
11. Unless health and safety of the child requires immediate removal, the agency can remove the child from the relative foster home after giving notice. The relative foster parents may request a conference with the agency to review the action, and if they do not agree with the removal, they have the right to appeal the decision at a fair hearing.
12. If the parent decides to surrender his or her parental rights, the Family Court terminates the parental rights, or if the parent dies, the kinship foster parent may file a petition in court to adopt the child. An adoption subsidy may be available if the child is eligible. Another option is to file a petition in court to become the child's permanent guardian. If adoption has been ruled out and the placement meets KinGAP eligibility requirements, the relative foster parent may apply for KinGAP assistance prior to obtaining guardianship.

# Permanency Options

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## Adoption

1. In this option, the child is freed for adoption either because the parent surrendered his or her parental rights, the Family Court terminated the parental rights, or the parent died. The relative can file a petition in court to adopt the child. The consent of the agency with legal custody or guardianship of the child is required.
2. Adoption is a permanent legal arrangement granted by the court. If you adopt the child, you will be the child's legal "parent" with all rights and responsibilities of the birth parents.
3. If the relative is the child's foster parent (Option C) before petitioning to adopt, an adoption subsidy may be available, if the child is eligible. If the child is eligible for an adoption subsidy, the subsidy payment will be comparable to the foster care payment they were receiving while the child was in foster care. In some counties, it may be up to 25 percent less based on the relative's income. However, if the child is placed with the relative as a direct placement (Option A) or has legal custody or guardianship of the child (Option B), then they will not be eligible for an adoption subsidy.
4. To become the child's adoptive parent, the relative must be approved as an adoptive parent. The relative and all family members living in the home age 18 or over must undergo background checks. These checks include (a) criminal history record review in New York State and through the FBI; (b) a child abuse/maltreatment history clearance in New York State and any other state in which the relative or any family members age 18 or over have lived in the previous five years; and (c) for adoptive parents approved after June 30, 2013, a review of the Staff Exclusion List (SEL) database maintained by the NYS Justice Center. Other requirements include a medical exam for the caregiver/family and an adoptive home study, including a home inspection. Usually the agency will require adoptive applicants to complete training if they have not already done so as foster parents.
5. If you want to adopt a child who is related to you but has been living with non-related foster parents, you can file a petition to adopt the child, but the foster parents would be given preference if they have had the child for a year or more and the consent of the agency with legal custody and guardianship of the child is required.
6. In addition to the adoption subsidy, adoptive parents may also be eligible to receive reimbursement up to a set amount per child for certain expenses related to the adoption, such as legal fees or travel expenses. In most cases, the child will continue to receive Medicaid or other medical coverage. Adoptive parents also may be eligible for a federal adoption tax credit. However, adoptive parents can no longer receive a public assistance non-parent caregiver grant.

## Guardianship with Kinship Guardianship Assistance Program (KinGAP)

1. Guardianship is a permanent commitment to be responsible for and support the child until he or she reaches adulthood. In some cases, with the youth's consent, guardianship may continue until the youth is 21. Some relatives may be eligible to apply for the Kinship Guardianship Assistance Program (KinGAP) and receive a KinGAP payment and other benefits to support the guardianship. Some details are listed below.
2. In this option, the relative must already be an approved or certified foster parent (Option C) for the child for at least the past six months. In addition, the first permanency hearing must have occurred and if the child came into foster care due to abuse or neglect, the fact-finding hearing must have been completed. There are other requirements that must also

be met, including that a return home and adoption must be ruled out. For more information, see the publication **Know Your Permanency Options: The Kinship Guardianship Assistance Program(KinGAP)**.

3. Relatives can apply for KinGAP if they meet the basic requirements listed on page 6 in number two. Upon receipt of an application, the child welfare agency will assess and make an eligibility determination. If approved, the relative and child welfare agency complete and sign a Kinship Guardianship Assistance Agreement.
4. The relative must file a petition in court asking for guardianship after the KinGAP application has been approved and the relative and county have fully completed and signed the KinGAP Agreement. If guardianship is granted before the KinGAP Agreement is fully executed, the case is not eligible for KinGAP. Once letters of guardianship are issued by the court, the child will no longer be in foster care.
5. If KinGAP is approved and the agreement goes into effect after letters of guardianship are issued, the relative will be eligible to receive a kinship guardianship assistance payment that will be comparable to the foster care payment they were receiving while the child was in foster care. In some counties, it may be up to 25 percent less based on the relative's income. In addition, the relative guardian may also be eligible to receive reimbursement up to a set amount per child for certain expenses related to obtaining guardianship, such as legal fees or travel expenses. In most cases, the child will continue to receive Medicaid or other medical coverage.
6. Other benefits and services may be available based on the circumstances and needs. These include but are not limited to, the Bridges to Health program if enrolled while in foster care, independent living services (including education and training vouchers) if the child was 16 or over when he or she left foster care for guardianship, Social Security benefits, or preventive services, if eligible.
7. KinGAP can continue until the child is 18 or, if the agreement went into effect when the child was age 16 or older, KinGAP may continue until the child is 21 years old. However, in order for KinGAP to continue, the relative guardian will receive an annual notice and will need to certify and provide information about the status of the child in the home, including his or her education/employment status. In between the annual requests, the relative must contact the child welfare agency if there is any change in the child's status in their home.
8. There is no requirement to terminate parental rights for guardianship with KinGAP. Depending on the circumstances of the case, the parent's parental rights may have already been terminated or not. If not terminated, then the child's parent will still have parental rights over the child. They can usually visit the child. They can also petition the court to have custody returned to them if they can show that there has been substantial change in their circumstance and it is in the child's best interest.

## Delaying the Decision to Become a Caregiver

Sometimes a relative cannot care for a child at the time the child is removed from the home. Then the child will likely go into the care of another relative or into foster care with nonrelative foster parents. The relative who did not take the child at first can ask the judge to place the child with him or her later; however, there is no guarantee that the judge will do this.

A relative may learn that the child is already placed in foster care. If this occurs, the law allows the relative to apply to the Family Court in an abuse or neglect case to become a kinship foster parent if no more than six months have passed since the relative was notified about the child's removal, and no more than one year has passed since the child was removed. Again, there is no guarantee that the relative will be approved as a kinship foster parent.

## What if a Relative Takes the Child and Later Does Not Want to Provide Care for the Child?

If things do not work out or the situation changes, the relative may be able to change the arrangement, depending on the option chosen. Under Options A and B, the relative must file a petition in court to modify the custody or guardianship order. The judge will want to know the reasons and may or may not grant the new petition. Under Option C, the relative must tell the agency that he/she is no longer willing to be a foster parent for the child. If the relative has adopted the child, the relative is now legally the child's parent. The relative may be able to transfer custody to someone else, but the relative will be responsible for paying child support for the child. If the relative has become the child's permanent guardian, the court may vacate (cancel) the order based on clear and convincing evidence that the guardian failed to or is unable or unwilling to provide proper care, and guardianship is no longer in the child's best interests.





**New York State  
Office of  
Children & Family  
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