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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.*



# When Relatives Care for Children

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 called the 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

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 box "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 three most common options available to relatives who wish to care for a child who is placed outside of the home:

- A. Direct Placement (N-docket custody)
- 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.

(The options for a noncustodial parent are different from those described here.)

## 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: [www.ocfs.state.ny.us/main/publications/Pub5080.pdf](http://www.ocfs.state.ny.us/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.

**Support for Relatives:** 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.

## Options for Relatives

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### 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 custody of the child. The temporary custody lasts only as long as there is an Article 10 case before the Family Court.
2. The relative may apply for a nonparent caregiver grant (also known as a “child only” grant) from the agency’s Temporary Assistance (TA) office.\* This benefit is generally available to all nonparent caregivers and includes Medicaid for the child. To receive the grant, the nonparent 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 nonparent 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 5) 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 New York City, the Human Resources Administration (HRA).

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, or the Family Court terminates the parental rights, 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.
3. The relative caregiver may apply for a nonparent caregiver grant (also known as a "child only" grant) from the agency's Temporary Assistance (TA) office. This benefit is generally available to all nonparent caregivers and includes Medicaid for the child. To receive the grant, the nonparent 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 nonparent 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 5) 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.

## 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. 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.
5. In this option, the child is *not* in foster care, and the relative is not eligible for relative (kinship) foster care payments. If the child later becomes free for adoption, the relative will not be eligible for adoption subsidy payments.
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 agency has care and custody of the child, and the relative receives foster care payments (see #5 below).
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 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, and (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. 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 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.
6. 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 is expected to cooperate with the agency, allow the caseworker to visit the child and the home, agree to 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 kinship foster parent must cooperate with the agency about any services that the child may need.
11. 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.
12. If found to be in the child's best interests, the agency can remove the child from the foster home after giving notice. The foster parents may request a conference 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.

13. If the parent decides to surrender his or her parental rights, or the Family Court terminates the parental rights, 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, but no subsidy is available for this option.

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### 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 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.

## Contact Information:

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

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

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

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



**New York State  
Office of  
Children & Family  
Services**

Capital View Office Park  
52 Washington Street  
Rensselaer, NY 12144

Visit our website at:  
**[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)**

For child care, foster care, and  
adoption information, call:  
**1-800-345-KIDS**

To report child abuse and  
neglect, call:  
**1-800-342-3720**

For information on the  
Abandoned Infant  
Protection Act, call:  
**1-866-505-SAFE**

For information about services  
for the blind, call:  
**1-866-871-3000**  
**1-866-871-6000 TDD**

**State of New York**



**Office of Children & Family Services**

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