



Office of Children  
and Family Services

A large, light blue silhouette of a house with a chimney, positioned behind the main title text.

Make an Informed Choice:  
**Kin Caring for Children**

*Understanding  
options is the best way for kin  
to have a voice and a choice.*



## When Kin Care for Children

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Sometimes children need to be placed in the care of kin because they cannot stay home with their parents. Kin caregivers may be a relative, friend of the family or a community member who has a significant and positive relationship with the child. Because of concerns about the child's safety, the child's kin may be asked to provide a home for the child that is safe, stable, and nurturing. The placement is meant to be temporary but can last days, months, years or even become permanent. When the local child welfare officials decide to remove a child from the home, they must notify relatives of the removal and consider their ability to care for the child. In some cases, a court may also order them to notify suitable persons identified by a parent. In New York State, local departments of social services (LDSS) are responsible for child welfare. The LDSS in New York City is known as the Administration for Children's Services (ACS).

## Options for Kin Caring for Children

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If you are contacted by an LDSS caseworker because a child needs care, the caseworker must inform you of your legal options for becoming a caregiver. If you are thinking about caring for a child, you should ask the caseworker what the options are and how much time there is to decide. This discussion is critical because should you decide to become a caregiver, your decision will determine which supports you and/or the child may be eligible to receive and which long-term permanency options may become available to you if reunification efforts with the parent fails. To aid your decision-making, you may also get independent advice from an attorney or contact a kinship program. (For more information, see page 9.)

The LDSS and the Family Court may decide to place a child in your home temporarily while you decide on an option. Regardless of which option you choose, the LDSS and the court will need to know that your home is safe and that you are a suitable person to become a caregiver for the child. The LDSS and court will make a determination about the type of placement that is in the child's best interests—a determination that may or may not be the same as what you have decided.

**Note:** If you decide not to care for the child, the child may be placed with another relative or family friend, or with certified foster parents who are unknown to the child. If the parents' rights are terminated later, the child will be freed for adoption, and the person with whom the child has been living for the past 12 months would generally be preferred as the adoptive parent.

This brochure briefly describes the options available to you if you 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 non-custodial parent are different from those described here.)

The brochure also includes information about delaying or changing the decision to become a caregiver and about two permanency options that may become available at a later date.

It's important that you understand your 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 you; and to consider the needs of the child, and whether you will need additional support that is sometimes provided to foster parents to adequately care for the child.

# Placement Options

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

### How does it work?

In this option, the child is removed from the home (protective removal) and placed with you 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” or “1017 placement.” You will be 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 or it may end during the Article 10 proceeding, depending on the status of the case.

The child’s initial “permanency goal” will likely be the long-term goal of returning home. You should expect that there will be parent visitation unless the court orders otherwise. The goal could change if the parent does not show progress in dealing with the issues that led to the child’s placement.

### Is there financial support?

Under this option, you do not receive financial support in the form of a foster care board payment and a clothing allowance, as the child is not in foster care and you are not a foster parent. However, you may apply for a non-parent caregiver grant (may be called a “child only” grant) from the LDSS’s Temporary Assistance (TA) office, or in New York City, ACS’s Human Resources Administration (HRA). This benefit is generally available to all non-parent caregivers and includes Medicaid for the child. The amount is usually less than you would receive as a foster parent. To receive the full grant, you 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 you or the child.

Public benefits, such as the Supplemental Nutrition Assistance Program (SNAP or food stamps) and heating assistance (HEAP), may be available for your household through the LDSS’s TA office or ACS’s 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 you work, you 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. You also may be eligible for child-related tax credits.

### Is there court and LDSS supervision?

Yes. The caregiver works in partnership with the LDSS and is expected to cooperate with the LDSS regarding 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.

The Family Court will periodically review the case at a permanency hearing. The LDSS must provide written permanency hearing reports to the Family Court eight months after removal and every six months thereafter. You will receive a copy of each report and will be invited to each of the permanency hearings.

### What are my long-term options for care of the child? Will there be financial support?

If the parent decides to surrender parental rights to the LDSS, or the LDSS petitions the Family Court and the court terminates parental rights, then the child is freed for adoption. At that point, the child is in the guardianship of the LDSS and you may apply to be an approved adoptive parent. If you are not the foster or adoptive parent, you would not be eligible for an adoption subsidy.

Whether or not the child is freed for adoption, you may file a petition in court to become the child’s guardian. If the child is freed and you have been the fully certified or fully approved foster parent for at least six consecutive months, then you may be eligible for financial assistance through the Kinship Guardianship Assistance Program (KinGAP). If you become the child’s guardian without first becoming the child’s foster parent, then you would not be eligible for KinGAP.

## Option B: Legal Custody or Guardianship

### How does it work?

In this option, you must file a petition in court asking for custody or guardianship of the child (Article 6 of the Family Court Act or Article 17 of the Surrogate's Court Procedure Act). If you can prove that extraordinary circumstances exist to place the child outside of the parent's custody, or if the parent consents, you will be awarded custody or guardianship of the child if the court finds that the granting of guardianship or custody is in the child's best interests. 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.

Under this option, persons with legal custody or legal guardianship share rights such as the authority to enroll the child in school and to enroll and receive coverage for the child in the person's employer-based health insurance. Persons with legal custody also have the same right and responsibility as persons with guardianship to make decisions and to issue any necessary consents regarding the child's protection; education; care and control; and health and medical needs.

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.

### Is there financial support?

Under this option, you do not receive financial support in the form of a foster care board payment and clothing allowance as the child is not in foster care and you are not a foster parent. However, you may apply for a non-parent caregiver grant (also called a "child only" grant) from your LDSS's Temporary Assistance (TA) office, or in New York City's ACS's Human Resources Administration (HRA). This benefit is generally available to all non-parent caregivers and includes Medicaid for the child. The amount is usually less than you would receive through foster care. To receive the full grant, you 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 you or the child.

Public benefits, such as the Supplemental Nutrition Assistance Program (SNAP or food stamps) and heating assistance (HEAP), may be available to your household through the LDSS's TA office or ACS's 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 you work, you 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. You also may be eligible for child-related tax credits.

### Is there court and LDSS supervision?

No. This option is different from the "direct placement" described in Option A because there is no routine, ongoing court involvement after the court issues an order of custody or guardianship. That is because this is viewed as a long-term plan for the child. There is also no ongoing involvement or oversight by the LDSS.

### Can I adopt the child and am I eligible for adoption assistance?

This option is considered long-term. The LDSS makes no effort to reunite the child with the child's parents. If the child later becomes freed for adoption, you will be able to adopt the child. Upon adopting the child, you would no longer be eligible to receive non-parent caregiver TA. You will also not be eligible for adoption subsidy payments because you are not the child's foster parent. In addition, because the child's being in foster care and you're being the child's foster parent are pre-requisites for KinGAP, you would **not** qualify for KinGAP assistance if you select this option.

## Option C: Foster Care

### How does it work?

In this option, the LDSS has care and custody or guardianship and custody of the child and the child is placed with you in a foster care placement. You will either be certified or approved as a foster parent depending on your relationship to the child. You receive foster care payments and other supports from the LDSS.

You may have a very limited time period to decide whether to become a foster parent. You should ask the caseworker how much time there is to decide and ask anything you need to know to help you make a decision.

### How do I become a foster parent?

The certification or approval will be done either through the LDSS or a voluntary authorized agency (VA) under contract with the LDSS. You may request to be dually certified and approved as both a foster and adoptive parent at the same time.

You and all family members living in the home who are 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 Federal Bureau of Investigation (FBI); (b) a child abuse/maltreatment history clearance in New York State and any other state in which you or any family members age 18 or over have lived in the previous five years; and (c) a check 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 you, a statement of health for other household members, and a home inspection to determine that you have safe and appropriate housing.

The LDSS or voluntary agency (VA) will require you to attend foster parent training. Each year the LDSS or VA will conduct a review before renewing your certification or approval as a foster parent.

A child may be placed with you on an emergency basis, pending full LDSS or VA approval or certification. A caseworker will visit the home to determine if you are willing to care for the child, make sure it is safe for the child, and obtain information for the full approval or certification process.

### Is there financial support?

This is the *only* option where you receive financial assistance in the form of a foster care maintenance payment. In addition to the basic foster care payment, you 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 school-related expenses for an older child. Foster care payment rates may be higher if a child meets certain criteria or has special needs. You are required to have extra training each year if any child placed with you receives a special or exceptional rate.

The foster care payments may not arrive right away, but payments are retroactive to the date of placement if you are also certified or approved as a foster parent. The LDSS will send you a notice about the foster care rate within 30 days of placement.

Although you will not be eligible for non-parent caregiver TA as a foster parent, you may still be eligible for other benefits such as SNAP, HEAP, and WIC. Foster parents also may be eligible for child-related tax credits. If you work full time, the child may be eligible for child care assistance.

### Is there LDSS/court supervision?

Yes. The foster parent works in partnership with the LDSS and is expected to cooperate with the LDSS and, if applicable, the VA regarding 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.

The parent's visitation plan must be approved by the LDSS and must comply with any orders of the Family Court.

The Family Court will periodically review the case of a child placed in foster care at a permanency hearing. The LDSS must provide written permanency hearing reports to the Family Court eight months after removal and every six months thereafter. The 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.

Unless the health and safety of the child requires immediate removal, the LDSS can remove the child from your home after giving notice. You may request a conference with the LDSS to review the action, and if you do not agree with the removal, you have the right to appeal the decision at a fair hearing.

### **Can I make decisions for the child?**

The “reasonable and prudent parenting standard” gives foster parents the authority to make day-to-day decisions regarding the child’s activities. This way, children in foster care can experience greater normalcy by participating in many activities enjoyed by their peers. Foster parents must make decisions for the child that are careful and sensible, promote the safety and best interests of the child and consider the child’s age and development.

The LDSS is still responsible for making many non-routine decisions. You should talk to your caseworker about the expectations regarding decisions made on behalf of the child in your care.

### **What are my long-term options for care of the child? Will there be financial support?**

If the parent decides to surrender parental rights, or if the Family Court terminates the parental rights, or if the parent dies, then you may file a petition in court to adopt the child. You must become either an LDSS-approved or VA-approved adoptive parent. Prior to the adoption, the LDSS’s consent would be required. 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 and the child’s return to his or her parent have been ruled out and the placement meets KinGAP eligibility requirements, you may apply for KinGAP assistance. To be eligible for KinGAP, you must obtain such approval before receiving guardianship.



# Permanency Options

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## Adoption

### How does it work?

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 the rights and responsibilities of a birth parent.

In this option, the child is freed for adoption either because the parent surrendered parental rights, the Family Court terminated the parental rights, or the parents died. You can file a petition in court to adopt the child. You have to be approved by an LDSS or VA as an adoptive parent. The consent of the LDSS with legal custody or guardianship of the child is required.

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. The consent of the LDSS with legal custody and guardianship of the child is required.

### How do I adopt?

To become the child's adoptive parent, you must be approved as an adoptive parent by a LDSS or VA before you file a petition in court. You and all family members living in the home who are age 18 or over must undergo background checks. These checks include (a) a criminal history record review in New York State and every other state through the FBI; (b) a child abuse/maltreatment history clearance in New York State and any other state in which you or any family members age 18 or over have lived in the previous five years; and (c) a check 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 you and all other household members and an adoptive home study, including a home inspection. The LDSS or VA will require adoptive applicants to complete training if they have not already done so as foster parents.

### Is there financial assistance?

If you are the child's foster parent (Option C) before you petition to adopt, an adoption subsidy may be available if the child is eligible. If you intend to apply for an adoption subsidy, you need to make sure that eligibility for adoption subsidy is completed before the child's adoption is finalized. If the child is eligible for an adoption subsidy, the subsidy payment will be comparable to the foster care payment you were receiving while the child was in foster care. In some counties, it may be up to 25 percent less based on your income. However, if the child is placed with you as a "direct placement" (Option A) or through a "legal custody or guardianship order" (Option B), then you will not be eligible for an adoption subsidy.

In addition to the adoption subsidy, you may also be eligible to receive reimbursement (up to a set amount) per child for certain expenses related to the adoption of a special needs child, 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. The adoption subsidy must end if the adoptive parents are no longer legally responsible for the support of the child or are no longer providing any support to the child.

# Guardianship and Kinship Guardianship Assistant Program (KinGAP)

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## What is guardianship?

Guardianship is a permanent commitment to be responsible for and support the child until he or she reaches adulthood. In many cases, guardianship may continue until the youth is 21 (if the child consents to this upon reaching the age of 18). Although the order of guardianship ends, the caregiver and youth frequently maintain a lifelong relationship.

There is no requirement to terminate parental rights for guardianship. Depending on the circumstances of the case, the parent's parental rights may or may not have already been terminated. If not terminated, then the child's parent will still have parental rights over the child and 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 that it is in the child's best interest.

## What is KinGAP?

The Kinship Guardianship Assistance Program (KinGAP) provides a payment and other benefits to support the care of a child through guardianship.

In this option, you must have already been, for at least six months, a fully approved or fully certified foster parent (Option C) of the child. In addition, the first permanency hearing must have occurred, and if the child came into foster care due to having been abused or neglected, the fact-finding hearing must have been completed. There are other requirements that must also be met, including a determination by the LDSS that being returned home and adoption are not appropriate permanency options for the child. For more information, see the publication *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)*.

## How do I become a guardian with KinGAP?

In order to participate in KinGAP you must first fill out an application. The LDSS will then assess and make an eligibility determination. If approved, you and your LDSS complete and sign a KinGAP Agreement.

You must file a petition in court asking for guardianship **after the KinGAP application has been approved and you and the LDSS 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.

If KinGAP is approved, the agreement goes into effect when letters of guardianship are issued.

## What level of financial support and other benefits will I receive?

When the KinGAP Agreement becomes effective, you will be eligible to receive a kinship guardianship assistance payment that will be comparable to the foster care payment you were receiving while the child was in foster care. In some counties, it may be up to 25 percent less based on your income. The level of payment is the same as if you received an adoption subsidy. In addition, you 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.

Other benefits and services may be available based on the circumstances and needs. These include but are not limited to, 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.

## How long does KinGAP last?

KinGAP can continue until the child is 18 years old and often until age 21. KinGAP may continue past the child's 18<sup>th</sup> birthday if the youth consents to, and the court grants, a continuation of guardianship. This will require that you or your attorney petition the court for continuation of guardianship before the child's 18<sup>th</sup> birthday.

You will also need to certify and provide information annually about the status of the child in the home, including his or her education/employment status. You must contact the LDSS if there is any change in the child's status in their home.



## Delaying the decision to become a caregiver \_\_\_\_\_

Sometimes you may not be able to care for a child at the time the child is removed from the home. In such a situation, the child will likely go into the care of another relative or family friend or with foster parents who are unknown to the child. While you can ask the judge to place the child with you later, there is no guarantee that the judge will do this.

If you are a relative, and you learn that the child is already placed in foster care, the law allows certain relatives to apply to the Family Court in an abuse or neglect case to become a foster parent if no more than six months have

passed since you were 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 you will be approved as a foster parent.

If you are a relative, and you learn that the child is already placed in foster care, the law allows certain relatives to apply to the Family Court in an abuse or neglect case to become a foster parent if no more than six months have passed since you were 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 you will be approved as a foster parent.

### **What if you want to stop providing care for the child?**

If things do not work out or the situation changes, you may be able to change the arrangement, depending on the option chosen.

Under Options A and B, you 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, you must tell the LDSS that you are no longer willing to be a foster parent for the child. If you have adopted the child, you are now legally the child's parent. You may be able to transfer custody to someone else, but you will be responsible for paying child support for the child.

If you have become the child's permanent guardian, the court may vacate (cancel) the order on the basis that you failed to or are unable or unwilling to provide proper care, and guardianship is no longer in the child's best interests.

## For More Information

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Opening your home to a child is a big decision with many factors to consider. Fortunately, there are many resources available to help you. You should utilize these resources when making your decision and after the child is in your care. Never hesitate to ask your caseworker any questions. More detailed information is also available. If you are not given the following publications, you should ask to receive them, or you can access them online:

- *Having a Voice & a Choice: New York State Handbook for Relatives Raising Children* provides greater detail about the options described here, as well as information on rights and benefits that may be available to you. This handbook can be found here <https://ocfs.ny.gov/main/publications/Pub5080.pdf>.
- *Know Your Permanency Options: The Kinship Guardianship Assistance Program (KinGAP)* can be found here: <https://ocfs.ny.gov/main/publications/pub5108.pdf>
- *New York State Foster Parent Manual* has detailed information on what it means to be a foster parent, including your rights and obligations and can be found here: <https://ocfs.ny.gov/main/publications/Pub5011.pdf>.

Part of the OCFS website is devoted to kinship caregiver information, including information about the Kinship Guardianship Assistance Program (KinGAP): <https://ocfs.ny.gov/kinship/default.asp>.

### **I need help caring for a child. What should I do?**

For help in finding a kinship program and resources, and to speak with a kinship navigator to understand your rights, access to benefits, general kinship questions, and finding local assistance, call the New York State Kinship Navigator at (877) 454-6463 or visit the website: [www.nysnavigator.org](http://www.nysnavigator.org). Certain private agencies may have support groups or offer other services for kin caring for children. Contact your local department of social services to find out what programs are offered: <https://ocfs.ny.gov/main/localdss.asp>.

## Contact Information

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

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

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

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



## Office of Children and Family Services

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Visit our website at:  
**<https://ocfs.ny.gov>**

For information about foster care, and/or adoption call:  
**1-800-345-KIDS (5437)**

To report child abuse and neglect, call:  
**1-800-342-3720**  
**1-800-638-5163 TDD/TTY**

For information on the Abandoned Infant Protection Act, call:  
**1-866-505-SAFE (7233)**

If you are deaf or hard of hearing, call your Video Relay System provider and ask to be connected to the telephone number you wish to reach.

Pursuant to the Americans with Disabilities Act, the New York State Office of Children and Family Services will make this material available in an appropriate format upon request.

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