

# Grandparents and Other Non-Parent Kinship Families: Legal Rights

Date: June 11, 2021

COLLATERAL DAMAGE: Elder Abuse and the Opioid Epidemic in Rural Virginia  
ZOOM Webinar

# Housekeeping

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All attendees are muted by the host.

Use the **Chat Box** for questions or comments and to report technical concerns.

Written materials were made available to attendees in advance. A recording will be posted to **[www.svlas.org](http://www.svlas.org)** (website of Southwest Virginia Legal Aid) after the training.

# Southwest Virginia Legal Aid

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**Non-profit law firm serving low-income families  
in 17 counties  
and four small cities in southwestern Virginia**

*Offices in Castlewood, Christiansburg, and Marion*

[www.svlas.org](http://www.svlas.org)



*in collaboration with*

**Southwest Virginia Elder Justice Task Force**

# Presenter

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Gerard Wallace, Esq.

Senior Director – retired December 2020

New York State Kinship Navigator

Public Service Professor

NYS U. of Albany, School of Social Welfare

# Talk Based Upon

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Wallace, G. W. (2016). A FAMILY RIGHT TO CARE: CHARTING THE LEGAL OBSTACLES. *GrandFamilies: The Contemporary Journal of Research, Practice and Policy*, 3 (1).

Available at:

<http://scholarworks.wmich.edu/grandfamilies/vol3/iss1/7>

# Onwards!

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- 85 slides in sixty minutes
- Brief survey of kinship laws and policies
- Disconnect between kinship care as a resource, and caregivers' view that they have family "rights"

# Caveat

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- Presentation based upon 23 years of kinship work, nationally and in New York State
- Generalizations always have exceptions

# Presentation: Purpose, Dissimilar Treatment, and a Question”

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**Purpose:** Present a road map identifying common Kinship Care legal issues

**Recognize Dissimilar Treatment:** Depending upon relationship and custodial arrangements, Kinship Caregivers are not treated similarly

**Question:** Do Kinship Caregivers who are performing the same task - “act as a parenting” - merit the same “rights” regardless of legal arrangements?



# Outline

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1. Definitions and Terms
2. Kinship Family Circumstances
3. Kinship Navigators
4. Two Key Issues
  - Child-Only Financial Assistance (TANF)
  - Child Welfare “Safety Plans”
5. Kinship Right to Care
6. Kin Opportunity to Care
7. Kinship Custodial Arrangements
8. Recent Federal Kinship Policies
9. Suggested Laws
10. Outreach

# 1. Definitions and Terms for Kinship Families

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TERMS - LACK OF CONSENSUS ON USAGE  
SEARCHABLE?

# Kinship Care: Defined

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Defined in Kinship Caregiver Support Act (U. S. Senate Bill 2004), Section 103 defined kinship caregiver, and even earlier by CWLA in 1990 and in its 2000 Standards of Care.

"Kinship care" means the **full-time care**, nurturing, and protection of children by **relatives**. (VA, § 63.2-100)

# Kinship Care: Defined

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Kinship care is commonly defined as "the full-time care, nurturing, and protection of a child by **relatives, members of their Tribe or clan, godparents, stepparents, or other adults who have a family relationship to a child.**"

<https://www.childwelfare.gov/topics/outofhome/kinship/>

“Kinship care is the full-time care and nurturing of a child by a **relative or someone who has a significant emotional relationship with a child not born to them**” (Families First Virginia, a kinship navigator program)

[http://familyfirstvirginia.com/prevserv/kinship\\_nav.html](http://familyfirstvirginia.com/prevserv/kinship_nav.html)

# Kinship Care NYS Definition

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"Kinship caregiver" means a relative or non-relative who is acting as a parent and who:

- (a) is related to the child **through blood, marriage or adoption;**
- (b) is **related to a half-sibling of the child through blood, marriage or adoption;** or
- (c) is **an adult with a positive prior relationship** with the child, a half-sibling of the child or the child's parent, including, but not limited to, a step-parent, godparent, neighbor or family friend.

A.3486/S.54 (awaits Governor's signature) – Adds definition to Social Services Law.

# Informal / Formal Kinship Care?

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## **Version A:**

**Informal:** Only kinship families **without court orders**

**Formal:** All kinship children **subject to court orders** (foster care and non-foster care)

## **Version B:**

**Informal:** All kinship families who are “**on their own**” (private court orders or no court orders) (guardians, legal custodians, informal custody, parental powers of attorney, etc.)

**Formal:** Only kinship foster children and some specialized child welfare programs

# Informal / Formal Kinship Care?

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Version B is similar to:

**Public and Private:** “This report defines kinship care arrangements that occur *without* child welfare system involvement as private and those that occur *with* child welfare involvement as public.”

2000 Report to Congress on Kinship Foster Care -  
public and private:  
<https://aspe.hhs.gov/report/report-congress-kinship-foster-care>

# Kinship Care / Grandfamilies

## A. Kinship Care

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- 2000 Report to Congress on Kinship Foster Care
- Kinship Guardianship Assistance Program, Kinship Navigators (Fostering Connections, 2008)
- U.S. Senate Resolutions Declaring September as Kinship Care Month (Res. 264, 2018)
- Federal Kinship Navigators
- Memo in Support of Using the Word “Kinship” in Federal Legislation, describes use of both words Available at [http://www.nysnavigator.org/wp-content/uploads/2015/12/Memo-in-Support-of-Word-Kinship\\_With-Appendixes-ABC-1.pdf](http://www.nysnavigator.org/wp-content/uploads/2015/12/Memo-in-Support-of-Word-Kinship_With-Appendixes-ABC-1.pdf)

## B. Grandfamilies

- No federal or state enactments - except 2021 American Rescue Plan Act (H.R. 1319)
- Used by Generations United, other D. C. think tanks, some programs
- Debate at U.S. Senate “Advisory Council To Support Grandparents Raising Grandchildren” – “Grandfamilies and Kinship Families”???



# Kinship Care / Grandfamilies

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## **Kinship Use in State Codes:**

At least forty states and District of Columbia:

More than 300 child welfare or family law statutes use term “kinship”

## **Grandfamilies Use in State Codes:**

Fifty states and District of Columbia:

No statutes use the term grandfamilies

# Kinship Care: Legal Terms

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In Loco Parentis	Relative caretaker	Grandparent caregiver
De Facto Custodian	Non-parent caregiver	Fictive Kin
Person acting as a parent	Related by blood, marriage, adoption	“Person Upon ...Dependent”
Person in parental relationship	Related by degree of kinship or sanguinity	Relative foster care

# 2. Kinship Family Circumstances

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DWARFS CHILD WELFARE SYSTEM, BUT SIMILAR  
CAUSES FOR CARE

# A Typical Caregiver Caller

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Caregiver: Maternal Grandma, age 56

Children: Siblings ages 6 and 3, health concerns

Parents: Dad incarcerated, Mom drug abuse

Intervention: Child Protective Services Investigation

Cause: Mom's home "unsafe"

Plan: Live "temporarily" with Grandma

Grandma: Retired, public housing, poverty level income, diabetes

Issues: Court petition, financial assistance, school enrollment, health care authority, pathway into foster care?, access to health services, food assistance, long term planning, others.

# How Many Kinship Children?

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**2.7 million children** - U.S. Senate Resolution 2018, declaring “September as Kinship Care Month”

**About 65% grandparents** - Federal Interagency Forum on Child and Family Statistics. *America’s Children: Key National Indicators of Well-Being, 2017*. Washington, DC: U.S. Government Printing Office, pages 3-4.

Adoption and Foster Care Analysis and Reporting System (AFCARS 2019):

**133,405 children** in Relative Foster Care (32% of all foster care)

# New York State

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203,000 children in public and private kinship care

Fewer than 8,000 children in kinship foster care

- 40% of All Foster Care
- NYC vs. Rest of State (ROS)

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# Virginia

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**69,000 children in public and private kinship care**

**312 children in kinship foster care**

Stepping Up for Kids, Annie E. Casey Foundation (2012) (estimates are based upon 2010 Census)

**317 children in kinship foster care - AFCARS 2017**

Child Trends: <https://www.childtrends.org/the-share-of-children-in-foster-care-living-with-relatives-is-growing>

**IS THIS ACCURATE????????????????????**

# Who are Kinship Children?

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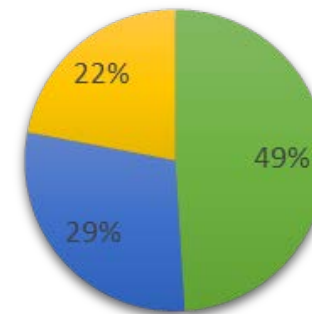
## Prevalence:

1 in 11 of all children will live in a kinship home during childhood

1 in 5 black children live in a kinship home

## Age:

- 49% of children are under the age of 6
- 29% are between 6-11
- 22% between 12-17



■ Under Six ■ Six to Eleven ■ Twelve to Seventeen



# Race/Ethnicity

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## U. S. Census and Grandparent Caregivers

**White – 3%**

**Black – 8%**

**Hispanic – 4%**

**Asian – 2%**

Pew Research Center: Children Living with or Being Cared for by a Grandparent (2013)

# Causes, Poverty, and Trauma

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SIMILAR TO REASONS FOR REMOVALS

UNEXPECTED CARE

ADVERSE CHILDHOOD EXPERIENCES

# How Do Children End Up in Kinship Care?

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**Abuse/Neglect**

**Parental  
Substance  
Abuse**

**Parental  
Mental Health**

**Death**

**Incarceration**

# The Children

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## Trauma

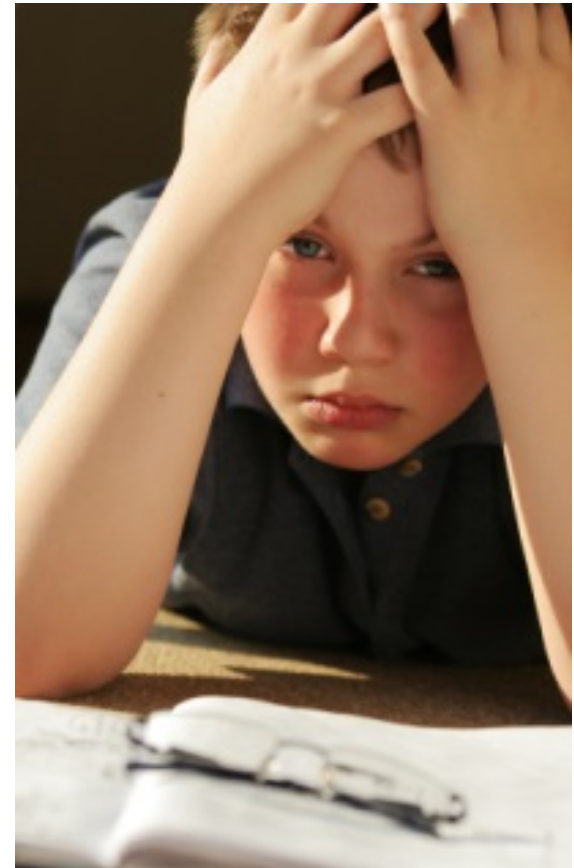
- Abuse/Neglect
- Separation from parents

Often upset and derailed

Disruptive Behaviors

Higher rates of ADHD, ODD, PTSD, adjustment and attachment disorders

ACE scores tend to be higher



# Adverse Childhood Experiences: Trauma, Loss, Toxic Stress

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Physical Abuse

Sexual Abuse

Emotional Abuse

Physical Neglect

Emotional Neglect

Intimate Partner Violence

Mother Treated Violently

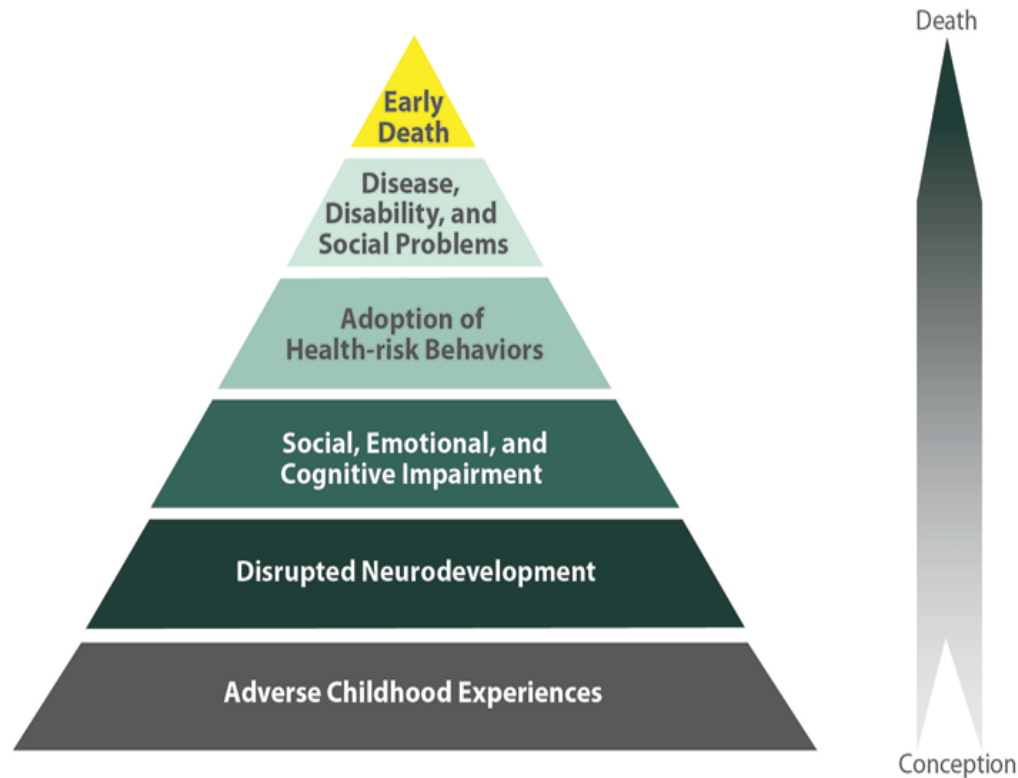
Household Substance Abuse

Parental Separation or Divorce

Incarcerated Household Member

[Centers for Disease Control ACE Pyramid](#)

# ACE Pyramid



Mechanism by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

# Poverty and Kinship Children

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38% of children in public and private kinship care live below the poverty line

63% below 200% of poverty line

Stepping Up for Kids, Anne E. Casey Foundation (2012) (Estimates are based upon 2010 Census)

44% of children at poverty

Needs of Kinship Care Families and Pediatric Practice, David Rubin, MD, FAAP, a, b Sarah H. Springer, MD, FAAP, c Sarah Zlotnik, MSW, MSPH, d Christina D. Kang-Yi, PhD, (2019) COUNCIL ON FOSTER CARE , ADOPTION, AND KINSHIP CARE

# Aging Caregivers

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Elder abuse

Cultural dissonance

Social disconnection

Loss of retirement

Covid-19 isolation



# Value and Special Issues

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KINSHIP CARE IS GOOD FOR KIDS



# Kinship Care

a natural resource

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AND

A

NATIONAL

RESOURCE!

# Value of Kinship Care

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Compared to children living in foster care with non-kin foster parents, children in foster care living with relatives have:

- **Greater likelihood of achieving permanency**
  - Recent study = 78% of teens in relative foster homes achieved permanency
- **Experience fewer school changes**
- **Better behavioral and mental health outcomes**
- **More likely to report “feeling loved”**
- **More likely to keep connections to sibling groups, extended family, and loved ones**
- **Less likely to re-enter foster care after returning to birth parents**

# 3. KINSHIP NAVIGATORS

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# NYS Kinship Navigator History

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- NYS Kinship Navigator – Started 2006
- Federal Kinship Navigator Demonstration Project – 2012-16
- NYS Kinship Summits – 2001, 2005, 2008, 2011, 2014, 2019
- Collaborations: CWLA, SUNY Albany, Albany Law
- Publications: CWLA Journals; Grandfamilies Journal, Summit Reports, Journal of Family Social Work, New England Common Ground, etc.

➤ **Need Assistance?**  
**Call Today: (877) 454-6463**



*Helping Non-Parent Caregivers  
Achieve Success All Across New York*

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### Help for Kinship Caregivers in all of New York's 62 Counties

The NYS Kinship Navigator is an information, referral and advocacy program for kinship caregivers in New York State. A kinship caregiver is an individual that is caring for a child that is not biologically their own. In New York State, there are an estimated 200,000 caregivers, 131,000 of whom are grandparents. Many others are aunts and uncles.

The Navigator seeks to assist these caregivers by providing information on financial assistance, legal information and referrals, and other types of services that caregivers provide to help maintain children in safe, stable, and nurturing environments.

**Local  
Presentations  
Now Available!**

Chat live with an agent now!

Online

# NYS Kinship Navigator

[www.nysnavigator.org](http://www.nysnavigator.org)

877-454-463

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## Information

- Legal Fact Sheets (cited)
- County Resources
- Helpline

## Referral

- Case Management Programs
- Support Groups
- Legal Referral Network

## Education

- Statewide Presentations
- Online Video Archive
- Legislative Education
- The Face of Kinship Care

## Advocacy

- Case by Case Advocacy
- State Govt. Advocacy

# Kinship Navigators: Indirect and Direct Services

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## **Indirect**

Information and Referral, Help Lines, Websites, Social Media, “Virtual Assistance”, Online access to services, collaborations, etc.

## **Direct**

Boots on the Ground, case management, support groups, in person advocacy and education, specialized local services, collaborations, etc.



# Permission to Contact

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## **Temporary Assistance & Child Welfare:**

- Permission to Contact Form
- 600% Increase in Referrals
- Trainings for Staff
- Community Collaborations



Makes it easier for kinship families to have contact and receive services from kinship programs

Allows client to indicate when it is preferred to contact them

Takes the “onus” off of families in crisis/struggling

**PERMISSION FOR KINSHIP NAVIGATOR TO CONTACT CAREGIVER**

Please check, sign and complete permission and contact information below, and then return to your staff person

Permission for Kinship Navigator to call you:  Yes  No (If No, Stop here)

Signature: \_\_\_\_\_ Date \_\_\_\_\_

1. Name of Primary Caregiver \_\_\_\_\_

2. Mailing Address: \_\_\_\_\_ Apt Number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

3. Home Phone: Area code: \_\_\_\_\_ phone: \_\_\_\_\_ - \_\_\_\_\_

4. Cell Phone: Area code: \_\_\_\_\_ phone: \_\_\_\_\_ - \_\_\_\_\_

5. Other Phone: Area code: \_\_\_\_\_ phone: \_\_\_\_\_ - \_\_\_\_\_

6. Email Address: \_\_\_\_\_

7. What language do you prefer?  English  Spanish

8. Preferences for contact (check all that apply)

Time of day:  Morning (9-12)  Lunchtime (12-1)  Afternoon (1-4)  Evening (4-6)

By  Email  Mail  Home Phone  Cell Phone

**Instructions for Staff:** Please complete the information below, and fax this form to 585-456-1676 or email to navigator@nysnavigator.org. Please store all completed forms for pick up by Kinship Navigator project coordinator.

County \_\_\_\_\_ Staff Person \_\_\_\_\_

**Child Welfare Staff Only:** Types of Placement:

"Temporary" (No Article Ten);  Article Ten "direct";  Article Ten into Article Six;

KinGAP;  Other \_\_\_\_\_

Organization/Agency \_\_\_\_\_ Unit/Supervisor \_\_\_\_\_

Does the client have a Safety Plan in place?  Yes  No

Date fax/email sent \_\_\_/\_\_\_/\_\_\_

If caregiver declined to be contacted, please check box.

(Please fax the form even if caregiver declined to be contacted; this is important for our records).

# “The Face of Kinship Care”

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2015 Film, Produced by Kinship Navigator

- Three New York State Families (Black, White, Native American)
- Their Stories, In Their Own Words

# Kinship Navigator Virginia

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See 1:40 Session “Virginia’s Family First Initiative”, includes Kinship Navigator Programs

Resources:

(888) 593-1972; [http://familyfirstvirginia.com/prevserv/kinship\\_nav.html](http://familyfirstvirginia.com/prevserv/kinship_nav.html)

Six Pilots;

Arlington, Bedford, Dickerson, James City, Virginia Beach, Smyth

And more:

Central Virginia: <http://kinshipnav.com/>

NewFound Families: Locator Tool <https://newfoundva.org/about-kinship/kinship-navigator-tool>

# 4. Two Key Issues

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## A. Child-Only Financial Assistance Grants

## B. Child Welfare “Safety Plans”

- Fostering Connections Act (2008)
  - Section 471(a) of the Social Security Act (42 U.S.C. 671(a)). **Removals require notice to relatives.**

# A. Non-Parent “Child Only” Grants

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FINANCIAL HELP FOR KIN OUTSIDE FOSTER CARE



# “Child Only” Grants

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Temporary Assistance to Needy Families (TANF) - Non-Parent (Child Only) Financial Assistance

Since 1950 – ADC – Nationally less than 15%

NYS Other Terms: PACO, NDG, Kinship, OTG, NPC, Grantee

NYS: 24,693 children receiving special “child-only” grant (12%)

# “Child Only” Grants

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## Eligibility

- Based on child’s income
  - Child Support Payments
  - Supplemental Security Income (SSI)
  - Social Security Benefits related to death or disability
- Caregiver’s income and resources NOT a basis for eligibility

Caregivers **do not need legal custody or guardianship** of a child to be eligible for assistance



# “Child Only” Grants

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## Barriers to Getting Grant:

- Child Support Enforcement
- Good Cause Exemption and Cooperation with Support Collection
- Eligibility Rules – Kin on public assistance?
- Confusion around application documents
- Cash Assistance counts against household income, so for the poorest families, it impacts their ability to remain on SNAP benefits or decreases the amount they get.

## Online Education

### Local Presentations Now Available!

### Headline News

Vox.com: The opioid crisis is making grandparents parents again

Today Show: One Nation Overdosed: Opioid crisis forces grandparents to care for grandchildren

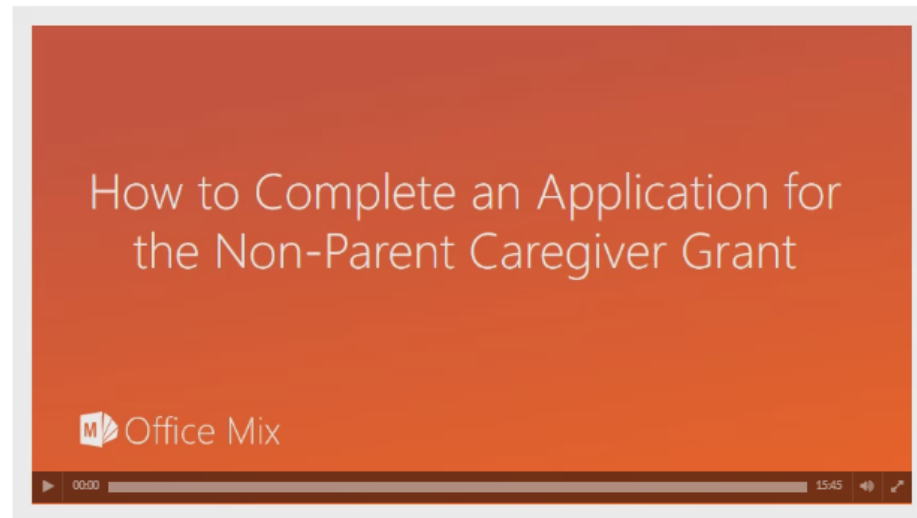
### Recent Posts

Engaging Kinship Caregivers: Managing Risk Factors in Kinship Care

"The Face of Kinship Care"

### Video Primers:

[How to Complete an Application for the Non-Parent Caregiver Grant](#)



[Eligibility Rules and Information for the Non-Parent Caregiver Grant](#)

## B. “Safety Plans”: Source of Informal Kinship Care

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“CPS gave me my grandchild eight years ago, this is the first time I’ve found out there’s help” Bronx grandma

Diversion from Foster Care – No removal (no neglect/abuse proceeding)

Not recorded in AFCARS

In NYS, “Alternative Living Arrangements”

AMERICA’S HIDDEN FOSTER CARE SYSTEM, Josh Gupta-Kagan\* 72  
STAN. L. REV. (forthcoming 2020)

# “Safety Plans”: Source of Informal Kinship Care

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- “Arrangements for care by kin, voluntary or coerced?”
- Constructive Removals – access to foster care?
- Six months rule

# 5. Kinship Right to Care

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“WE HAVE NO RIGHTS, WE GET NO HELP, THE LEGAL AND POLICY DILEMMAS FACING GRANDPARENT CAREGIVERS.”  
*JOURNAL OF FAMILY ISSUES*, 29(8), 995-1012, LETIECQ, B., BAILEY, S., & PORTERFIELD, F. (2008).

# Kinship “Right to Care”

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- Kin ask me: “What are My Rights” (Hunter College Grandparent Caregiver Law Center 1999 onwards)
- Kin believe:
  - They are not respected
  - Dysfunctional parents should not be able to disrupt kinship families
  - They have a greater right to care than state
  - They deserve financial assistance and services similar to foster parents

# Kinship Gains Since 1970's

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1. 1970's: Grandparent Visitation Statutes
2. 1980's: Child Welfare – Growth of Kinship Foster Care
3. 1990's: Aging – Powers of Attorney, Grandparent Rights
4. 1998-2000's: De Facto Custody Statutes
5. 2008 Onwards: Child Welfare – Still only Preference But Required Notice of “Options”, Kinship Guardianship, Increase in Kinship Services (Navigators) (Fostering Connections To Success and Increasing Adoptions Act 2008)
6. 2018 Onwards: Kinship Navigators, Other Services (Appropriations; Families First Prevention Services Act 2018)

# Parents' Fundamental Rights

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- *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)
- *Pierce v. Society Of Sisters*, 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)
- *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944)  
(Aunt Custodian)
- *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)
- *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)
- *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)



# Kinship Decisions at U. S. Supreme Court

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- *Moore v. City Of East Cleveland, 431 U.S. 494 (1977)*  
Some Parent Rights – Extended Families – – Zoning Law
- *Miller v. Youakim, 440 U.S. 125 (1979)*  
Kinship Foster Care - Same services as non-kin foster parents
- *Troxel v. Granville, 530 U.S. 57 (2000)*  
Grandparent Visitation – Special weight
- *Smith v. Org. Of Foster Families For Equality & Reform (“OFFER”), 431 U.S. 816 (1977)*  
Foster Parent – No Constitutional Protections

# “Family Rights” – Kinship Foster

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## Kinship Foster Parent Removals

**Half sister**, who had liberty interest in preserving familial relationship with her half brother and sister, **did not waive any of her constitutional rights by entering into foster care agreement** with state welfare department, even though agreement authorized state to remove children from foster home at any time, where there was no evidence that half sister intentionally and intelligently waived her due process rights when she signed the agreement or that state informed her of legal implications of her decision.

*Rivera v. Marcus*, 696 F.2d 1016 (1982)

# “Kinship Rights” – Kinship Foster

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Procedural Not Substantive Due Process

**Procedural due process** asks whether the government has followed the proper procedures when it takes away life, liberty or property.

**Substantive due process** looks to whether there is a sufficient **substantive** justification, a good enough reason for such a deprivation.

# “Family Rights” – Not Really

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Procedural not Substantive, and Same as Foster Parents

*Balbuena v. Mattingly*, 2007 WL 2845031, (S.D.N.Y. Sep 28, 2007)

*Johnson v. City of New York*, 2003 WL 1826122, (S.D.N.Y. Apr 08, 2003);

*Rodriguez v. McLoughlin*, 49 F.Supp.2d 186, 194+ (S.D.N.Y. Jan 08, 1999);

*Cabrales v. Los Angeles County*, 644 F. Supp. 1352, 1354+ (C.D.Cal. Sep 03, 1986);

*Bellet v. City of Buffalo*, 2009 WL 2930464, \*3+ (W.D.N.Y. Sep 11, 2009).

# 6. Kin Opportunity to Care

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## 1. Versus Parents

- When parents consent
- When parents will not consent

## 2. Versus the State

- Children in foster care system

## 3. Diversion by State into Private Care

# Opportunity to Care for Children in Parent or Kin Care

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## **Custodial Law is State Specific**

Consent can be removed

Without consent, must show parent unfit or “harm” or child has lived with caregiver for extended period of time

## Caregiving Period of Time:

*Bennet v. Jeffreys*, 51 A.D.2d 544 (N.Y. App. Div. 1976; DRL 72(2); *Suarez v. Williams*, 134 A.D. 3d, 1479 (2015); 26 N.Y.3d 440, Ct. of Appeals (Dec. 16, 2015); NYS Domestic Relations Law § 72(2); Kentucky KY ST § 403.270 (1998; Indiana (1999); Minnesota (2002); Idaho ((2004); Few others and case law

# Opportunity to Care for Children in State Care

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## **State and Federal Law**

No Federal Right to petition for foster care

NYS Petition to Become Foster Parent: NYS Family Court Act § 1028-a

May petition for private custody/visitation

# 3. “Diversion” – After Removal

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- Fostering Connections to Success and Increasing Adoptions Act of 2008 – Required notice to relatives, including all grandparents, in writing and within 30 days. Attempt to decrease diversion.
- State statutes and regulations govern local child welfare agency and court enforcement of search, notice, and information. Enforcement?
- Growing “right” to become a foster parent

[Glisson v. D. O, 847 F.3d 374 \(6th Cir. 2017\)](#): Private Right of Action to Seek Foster Care Payments (Grandmother was approved foster parent)

Federal Child Welfare Act confers upon foster parents an individually enforceable right to foster care maintenance payments that is enforceable under § 1983; absent resort to § 1983, foster families possess no federal mechanism to ensure compliance. Social Security Act § 472, [42 U.S.C.A. § 672\(a\)\(1\)](#); [42 U.S.C.A. § 1983](#).



# “Diversion” – After Removal

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## **Notice to Relatives**

Do Kin Actually Learn Their Options?

Do Judges Ask?

Do They Get to Choose Foster Care?

Quasi Foster Care Arrangements Encouraged?

Diversion Debate, Annie E. Casey, 2018, others at [www.nysnavigator.org](http://www.nysnavigator.org) at “Kinship Policy”

# Why Do Kin Not Become Foster Parents?

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## State Saves! Dollars and Resources

- Private care much less expensive
- De facto policies and practices support lessened burden on agency
- Policy Dilemma: More kin into foster care, but also keep children with kin outside of foster care?

Kin may prefer independence, or may not qualify as foster parents.

# 7. Typical Custodial Arrangements / Elements of Care

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CHARTING THE LEGAL OBSTACLES

# Kinship Custodial Arrangements

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- Informal custody (no court order)
- Legal custody
- Child Welfare custody
- Legal guardianship
- Kinship guardian
- Foster care
  - Child welfare quasi foster care?
- Adoption

# Elements of Care

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**Recognition:** How does the law identify kinship care. (We talk about this)

**Authority:** Who can make decisions for the child?

- **Security:** Can the child remain in Kinship Care?
- **Financial:** Access and Types of financial assistance
- **Resources:** Access and Types of services

LEGAL ARRANGE- MENT	KINSHIP PARENTING NEEDS				
	A	B	C	D	E
	RECOGNITION PROCEDURE	AUTHORITY	SECURITY	FINANCIAL ASSISTANCE	SERVICES
INFORMAL CUSTODY	?	?	X	?	X
LEGAL CUSTODY	A	?	?	?	X
CHILD WELFARE CUSTODY	A	?	?	?	X
LEGAL GUARDIAN	A	A	?	?	?
KINSHIP GUARDIAN	A	A	?	?	?
FOSTER CARE	A	X	?	A	A
ADOPTION	A	A	A	?	?

A = ADEQUATE

X = INADEQUATE

? = MAY OR MAY NOT BE ADEQUATE

# Elements of Authority

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## **Schooling and school enrollment**

## **Medical decision-making**

- Immunizations, routine, major medical
- Admissions to health facilities

## **Access to records**

- Birth certificates, Social Security cards, passports, medical records

# Authority by Arrangements

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## **Informal custody:**

Statutory authority, parental powers of attorney, Affidavits, standby guardian in some states

(Virginia Code Title 22.1. Education § 22.1-3. Persons to whom public schools shall be free): In loco parentis, affidavits, [§ 22.1-360](#) (special power of attorney), legal custody, temporary kinship care – may require notarized affidavits; homeless child (Subtitle VII-B of the federal McKinney-Vento Homeless Assistance Act).



# Authority by Arrangements

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## **Legal/Physical custody: Decision making incomplete**

VA: legal = (1) non-emergency medical care, (2) religious upbringing, and (3) education)

**Child welfare:** Foster – caregivers are agents of state (May stay in same school); Depends on alternative types of placement

**Guardianship:** Similar to parents (“parents and guardians”)

VA § 64.2-2013. Standby guardianship or conservatorship for incapacitated persons)

VA minor child power of attorney (only parents and guardians can appoint);  
<https://eforms.com/power-of-attorney/va/virginia-guardian-of-minor-power-of-attorney/>

**Adoption:** Replaces parent

# Security by Arrangements

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**Informal Custody:** consent is revocable, no court order – at risk, threats by parents

**Legal Custody:** Consent revocable via court petition; Finding of Extraordinary Circumstance may “level playing field”

**Child Welfare:** State usually retains care and control; Exit to Kinship Guardianship

**Guardianship:** Similar to Legal Custody

**Adoption:** Parental rights cease, but sometimes right to contact for parents

# Access to Public Benefits and Services – All Arrangements

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**TANF:** Eligibility rules for “child-only” grant; parent “support”

**SNAP:** Household Concept

**Social Security:** SSI, Grandparent Retirement, SSD

**Daycare:** May be eligible

**Medicaid/CHIP:** Eligible

**FAFSA:** Custody and guardianship differ

**Income Tax Credits:** 6-month rule, “Dependent”

**Services:** Child Welfare, Aging (Community Living), Mental Health, Drug Treatment, Other

# Access to Legal Assistance: Information, Advice, Limited Representation, Representation

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## Legal Assistance

- Indigent parties assigned counsel in civil actions?
- No funded legal services?

## Caregiver Support Act 2000 (Community Living)

## Families First Prevention Services Act 2018

- Abuse/Neglect proceedings

## Legal Information (and “Legal Assistance”)

- Kinship Navigators

# 8. Federal Kinship Policies

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## **2008 Fostering Connections to Success and Increasing Adoptions Act**

After Removals, Due Diligence Search, 30 days

Notice to Relatives, Including Grandparents

Inform about All Options for Care (in writing)

Kinship Guardianship programs

Plus: demonstration projects: kinship navigators,  
“intensive” family finding

# Families First Prevention Services Act 2018

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States can use funds for time limited services aimed at preventing use of foster care in maltreatment cases

Candidates for entry into foster care can get 12 months of preventive services

Kinship Navigator Funding, Evidenced Based

# Other Recent Federal Acts

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## Consolidated Appropriations Act (2018, 19, 20, 21)

- Omnibus Consolidated Appropriations
- (\$20,000,000 for kinship navigators).

## Grandparents Raising Grandchildren Act (2018)

- Create federal Agency Advisory Council

# 2021 Federal Acts

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## Consolidated Appropriations Act (2021)

- Omnibus Consolidated Appropriations
- (\$20,000,000 for kinship navigators)
- To assist states, territories and tribes in having their kinship navigator programs meet the evidence-based requirements as described in the Family First Prevention Services Act of 2018 (42 USC §671(e)(4)(c)).
- (Proposed September 2022 budget for 2022 - \$30,000,000)



# 2021 Federal Acts

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## Consolidated Appropriations Act (2021)

Covid-19 Relief Provisions: Provides 100 percent federal reimbursement for states, territories and tribes use to carry out kinship navigators pursuant to Fam. First Prev. S. Act

Provided assurances that programs are working to meet evidence base requirements (waiver to 9/30/2021)

Use Funds for Legal Assistance and Goods

Note: Clearinghouse Handbook. See page 14 for Outcomes, and Children's Bureau ACYF-CB-PI-21; Issued March 9, 2021 ("Access to Services, Referral to Services, Satisfaction with Programs and Services")

# 2021 Federal Acts

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## American Rescue Plan Act (H.R. 1319)

Provides \$10 million for the **National Technical Assistance Center on Grandfamilies and Kinship Families.**

The Center will be established through the Administration for Community Living and will provide training, technical assistance, and resources for government programs, nonprofit and other community-based organizations, and Indian Tribes, Tribal organizations, and urban Indian organizations, that serve grandfamilies and kinship families

# 9. Towards Kinship Family Right to Care – Diversion - Reforms

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## Child Welfare and “Safety Plan” Diversion

- Regulate Safety Plans
- Provide Private Remedies for Diversion
  - Permit Petition Pathway into Foster Care
- Use Constructive Removals To Open Foster Care to Kin  
[https://www.acf.hhs.gov/cwpm/public\\_html/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=38](https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=38)
- Mandate Increases in Percentages of Kinship Foster Care
- End “look back” to AFCS poverty standards
- Define Kinship Caregiver in statutes

# 10. Outreach

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View film “The Face of Kinship Care”

- <https://vimeo.com/409095289/7096f79272>

Use Permission to Contact Form

September is Kinship Care Month (visit NYS Kinship Navigator for details)

2021 September Kinship Events: TBD

**HELP KINSHIP CAREGIVERS BY REFERRING CAREGIVERS  
TO KINSHIP SERVICES!**

# THANK YOU!

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