Kinship Care: Charting the Legal Obstacles

Onondaga County
Permanency Summit – 2018

Kinship Care: Sponsors – Funding

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Presenters

Gerard Wallace, Esq.
Director
NYS Kinship Navigator,
Public Service Professor
School of Social Welfare
SUNY at Albany

Rae Glaser Co-Director NYS Kinship Navigator



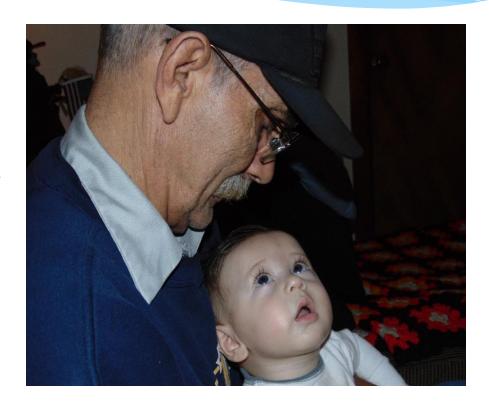
Background

- NYS Kinship Summit Reports
- CWLA National Kinship Summit
- Grandfamilies: "Family Right to Care"
- Albany Law School
- Hunter College Grandparent Caregiver Law Center
- www.gerardwallace.org



Takeaways

- Kinship Navigator: How to Make Referrals
- Kin Have No Right To Care
- Informal Custody No Need for Court Orders
- Parental "Powers of Attorney"
- Custody and Guardianship are not the same



Handouts

- Permission to Contact Form
- OCFS Child Trends Placements Data
- Comparison Legal Arrangements Chart

Outline

- 1. Introduction:
 - Kinship Navigator Program
 - Kinship Families and Their "Right to Care"
- 2. Opportunity to Care for Children
- 3. Custodial Arrangements
- 4. Kinship Related Laws Since 2000
- 5. Emerging Kinship Legal Issues

NYS Kinship Navigator



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

Q Search

Local
Presentations
Now Available!



Online

Kinship Navigator History

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



* Information

- Legal Fact Sheets
- County Resources
- * Helpline

* Referral

- * Case Management Programs
- * Support Groups
- Legal Referral Network

* Education

- Statewide Presentations
- Online Video Archive
- Legislative education

* Advocacy

- Case by case advocacy
- Statewide advocacy

Kinship Navigator Federal Demonstration Project

Local Departments of Social Services Collaboration:

- Center for Human Services Research Evaluation (CHSR)
- Permission to Contact Procedure
- Dept. of Social Services Trainings

Permission to Contact

Temporary Assistance & Child Welfare:

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



Permission to Contact Form

- 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:	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. CountyStaff Person							
Child Welfare Staff Only: Types of Placement:							
□ "Temporary" (No Article Ten); □ Article Ten "direct"; □ Article Ten into Article Six;							
KinGAP: Other							
Organization/AgencyUnit/Supervisor							
Does the client have a Safety Plan in place? Wes 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).							

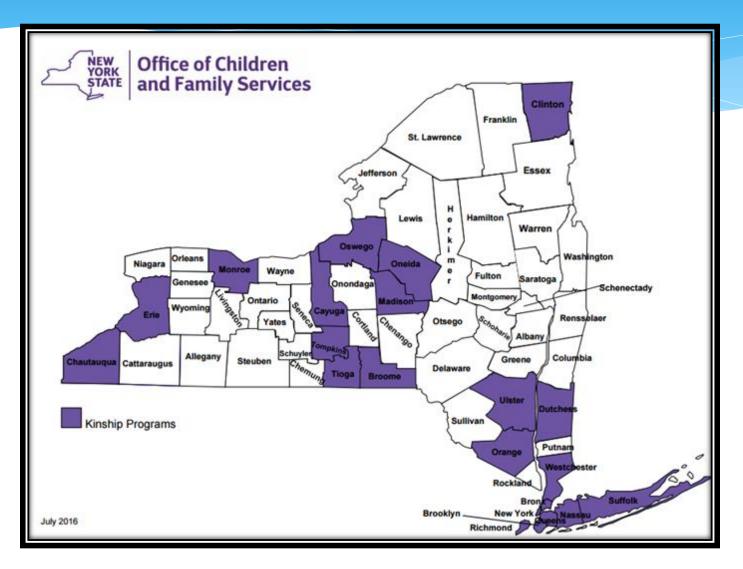
Local Kinship Services

- 22 funded local kinship case management programs
 Services cover 22 counties
 - Permanency Centers (adoptions and guardianships)

Office for the Aging Kinship Services

- * Support groups, subcontractors
- Legal Assistance
 - Pro-bono and Low-bono legal services to help with custody issues throughout the state
- Other Services
 - Locally funded Relatives as Parents Programs and support groups

Local Kinship Programs



Kinship Public Benefits

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

Temporary Assistance Policy: Non-parent Caregiver Cases and Temporary Assistance (TA), INF LT, 05-INF-24

- * Other Terms: PACO, NDG, Kinship, OTG, NPC
- Eligibility Requirements
 - * Application Process
 - Additional Considerations
 - * Good Cause Exemption from Support Obligation OTDA INF LT 08-INF-16
 - * Parent Support Obligation Causes Caregivers to Not Apply

Who are Kinship Families?

Kinship care refers to the **care** of children by relatives or, in some jurisdictions, close family friends (often referred to as fictive **kin**)...

Kinship Care - Child Welfare Information Gateway, https://www.childwelfare.gov/topics/outofhome/kinship/

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."

About Kinship Care - Child Welfare Information Gateway, https://www.childwelfare.gov/topics/outofhome/kinship/about/

New York's Kinship Families

New York State:

- 153,000 children Stepping Up for Kids, Anne E. Casey Foundation, 2012
- Fewer than 3,400 Children Kinship Foster Care
 - o 20% of All Foster Care
 - o NYC vs. ROS

See OCFS ChildTrends data handout

Do Kin Have a "Right to Care"?

Kinship Family Rights

- Opportunity to Care
- Caregiving

Thesis from 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

Assigned Counsel - FCA 262:

- Parents usually get assigned counsel
- Assigned counsel to indigent petitioners who are respondent legal custodians
- Judges sometimes assign to non-parent caregivers?

Parents' Rights are "Fundamental"

- 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)
- Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)
- Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)

"Family Rights" Sometimes

Procedural vs. Substantive

Moore v. City of East Cleveland, 431 U.S. 494 (1977))
Examples: Balbuena v. Mattingly, 2007 WL 2845031, *6+
(S.D.N.Y. Sep 28, 2007)Johnson v. City of New York, 2003
WL 1826122, *6+ (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).

Grandparent visitation

Troxel v. Granville, <u>530 U.S.</u> 57 (2000)

2. Opportunity to Care

Versus Parents

- Article Six Custody or Guardianship
- Need Consent or Extraordinary Circumstance

(Bennet v. Jeffreys, 51 A.D.2d 544 (N.Y. App. Div. 1976; DRL 72(2))

- Visitation (DRL 72(1))

(E.S. v. P.D., 8 N.Y.3d 150 (2007)



Opportunity to Become Foster Parent

When children are already in foster care (FCA 1028-a)

- (i) the relative is related within the third degree of consanguinity to either parent;
- * (ii) the child has been temporarily removed under this part, or placed pursuant to <u>section</u> one thousand fifty-five of this article, and placed in non-relative foster care;
- * (iii) the relative indicates a willingness to become the foster parent for such child and has not refused previously to be considered as a foster parent or custodian of the child, provided, however, that an inability to provide immediate care for the child due to a lack of resources or inadequate housing, educational or other arrangements necessary to care appropriately for the child shall not constitute a previous refusal;
- (iv) the local social services district has refused to place the child with the relative for reasons other than the relative's failure to qualify as a foster parent pursuant to the regulations of the office of children and family services; and
- * (v) the application is brought within six months from the date the relative received notice that the child was being removed or had been removed from his or her home and no later than twelve months from the date that the child was removed.

Why do Kin Not Become Foster Parents?

Child Welfare Placements

- Dollar value of kinship care
 - Cost benefit of informal vs formal

http://www.nysnavigator.org/pg/professionals/documents/NewYorkStateChildWelfareCosts and Kinship Care.pdf

- Do Some LDSS's divert from foster care?
 - Lack of uniform opportunity across state (See OCFS Placement Data)

NYS Bar Task Force on Family Court, Final Report, 2013, Recommendation 20.

Why do Kin not Become Foster Parents?

 Child Protective Services or police request relatives to assist – before removal (no data)

(18 NYCRR § 430.10(b)(2) (OCFS – Necessity of placement))

- Child Protective Services request relatives to assist
 - after removal

(FCA 1017 Direct Custody or FCA Article Six)

FCA Section 1017

- Section 1017 Implementation
 - o Judicial Inquiry?
 - Written Information provided by DSS?
 - o "Direct" Custody (can request foster care, but for how long?)
 - Article Six Custody (no going back)

Section 1017

- Judges asking about Notice/Options?(Never 25%, Always 15%)
- Worker Providing Booklets?(Never 31%, Always 27%)

The American Bar Association's Center on Children and the Law "2015 NYS Kinship Survey Report", requested by the Office of Children and Family Services.

• Section 1017 – Remedies?

o FCA 1061

For good cause shown and after due notice, the court on its own motion, on motion of the corporation counsel, county attorney or district attorney or on motion of the petitioner, or on motion of the child or on his behalf, or on motion of the parent or other person responsible for the child's care may stay execution, of arrest, set aside, modify or vacate any order issued in the course of a proceeding under this article.

- Section 1017 Remedies?
 - o FCA 1061

The trial court erred in denying a grandmother's New York Family Court Act § 1061 motion to terminate the pre-adoptive placement of her grandchild because the department failed to comply with former New York Family Court Act § 1017, by failing to ask the grandmother if she was interested in acting as a foster parent or wanted grandparent visitation. The grandmother was confused as to her options with regard to foster placement and the department failed in its statutory duty to explain the options and make clear to the grandmother that her inaction could ultimately lead to the foster parents obtaining custody of the child. The Department's failure to properly explain to the grandmother her options potentially deprived the child of a placement with a suitable relative. The grandmother was able to demonstrate prejudice to both herself and the child arising from the failure of the department to comply with § 1017 and good cause existed to vacate the placement order. *Matter of Randi NN. v Joseph MM.* (2009, 3d Dept) 68 App Div. 3d 1458, 891 NYS2d 521.

- Section 1017 Remedies?
- * Debra VV. v. Johnson, 2nd Dept; 26 A.D.3d 714, 811 N.Y.S.2d 457 (N.Y. App. Div. 2006), also 1-8 LN Answer Guide NY Family Court Proceedings § 8.35
- * CPLR Article 78 proceeding to review the decision of the Office of Children and Family Services denying an aunt's application for kinship foster care payments. Caseworker informed aunt that "there was no such thing" as kinship foster care benefits. Petitioner then filed for custody and county withdrew its application for the removal of the children. Family court awarded custody to the aunt. The aunt then sought benefits. OCFS ruled that since the child was not placed in foster care, payments were not warranted.
- * In this instance, the parent had identified the aunt as a resource and sought to have the children placed in foster care with the aunt, pursuant to Social Services Law 384-a(2)(h)(ii), wherein there is a statutory duty to assist the relative to become a foster parent. Despite affirmative duty, the department in a family court hearing declared, "Albany County has never recognized kinship foster care." Appellate court found that successfully placing a child with a relative does not relieve the state of its affirmative duty to provide foster placement." Annulled and remitted.

- Section 1017 Remedies?
- * In re Jermaine H., a Child Found to be Neglected. Lisa H., Respondent. 26 Misc. 3d 891, 892 N.Y.S.2d 738, 2009 N.Y. Misc. LEXIS 3338, 2009 NY Slip Op 29506 (Family Court of New York, Monroe County) November 25, 2009, Decided. "What is at stake here is money i.e., whether the Monroe County Department of Human Services ("DHS") must pay foster care money for 'emergency kinship foster care' to the friend of the family it has chosen and approved to care for the subject child in this neglect proceeding and who is willing to be a foster parent, just as if she were a stranger certified to provide foster care to this same child." County resisted certification of caregiver, court ordered county to follow regulatory scheme. County did not have discretion to follow regulations.
- * Order placing neglected child with maternal aunt and uncle, pursuant to their agreement under Family Ct Act § 1017(1) to "provide free care and custody," did not constitute irreversible election and would be modified in best interest of child to alter status of aunt and uncle to that of foster care parents, thereby making available to them necessary financial support and assistance. In re Joseph P. (1990, Fam Ct) 148 Misc 2d 25, 559 NYS2d 623.
- (For more recent cases, see handout)

Voluntary Placements SSL Section 358-a, 384-a

- * If unable to care for a child, a **parent or guardian** may sign what is known as a voluntary placement agreement. This agreement allows the child to be placed in temporary foster care with a LDSS.
- * The foster parents with whom a child is placed may be relatives of the child. The child may also be placed in a group home.
- * If the child is to remain in care for longer than 30 days, the social services agency responsible for supervising the child's foster care must file an L petition in Family Court.
- * **358(a) Hearing:** A judge reviews the voluntary placement agreement signed by the parent or guardian to determine whether the placement of the child in foster care was both voluntary and necessary.
- * The judge will approve the placement as long as the following conditions are satisfied:
- The placement was voluntary and made knowingly by the parent or guardian
- The placement is in the best interests of the child
- Reasonable efforts were made by the social services agency to prevent the removal of the child from the home
- Reasonable efforts were made by the social services agency to return the child to the home before the SSL 358(a) hearing.

Adoption: Conditional

- * **Public:** Dom. Relations Law 112-b public adoptions may be conditional.
- * **Public:** Foster Care: Soc. Serv. Law 383-c
- * (b) If a surrender instrument designates a **particular person** or persons who will adopt a child, such person or persons, the child's birth parent or parents, the authorized agency having care and custody of the child and the child's attorney, may enter into a written agreement providing for communication or contact between the child and the child's parent or parents on such terms and conditions as may be agreed to by the parties.
- * If someone is designated to adopt, must be person who is "certified or approved foster parent" or "agency has fully investigated and approved such person as an adoptive parent" Burt memo.

3. Private Custodial Arrangements

LEGALSTATUS		KINSHIP PARENTING NEEDS				
		А	В	С	D	E
		RECOGNITION/ PROCEDURE	AUTHORITY	SECURITY	FINANCIAL ASSISTANCE	RESOURCES
1	INFORMAL CUSTODY	?	?	Х	?	Х
2	LEGAL CUSTODY	А	?	?	?	Х
2a	DIRECT CUSTODY	А	?	?	?	Х
3	LEGAL GUARDIAN	А	А	?	?	?
3a	KINSHIP GUARDIAN	А	А	?	?	?
4	FOSTER CARE	А	Х	?	А	А
5	ADOPTION	А	Α	А	?	?

Custodial Arrangements

Elements of Care:

Recognition: How the law identified you

Authority:

Schooling and school enrollment
 Medical Care: emergency care, immunizations, routine, major

Records – Birth Certificate, Social Security Card, Passports, etc.

Security: Protections from losing children

Financial: Access and Types of financial assistance

Resources: Access and Types of services

What are Kinship Families Called?

Descriptive Phrases:

- Formal vs. informal kinship (public vs. private)
 - REPORT TO THE CONGRESS ON KINSHIP FOSTER CARE. FEDERAL KINSHIP CARE POLICY, 2000.
- * Non-parent caregivers or relative caretakers (OTDA 05-INF-24, SCPA 1726)
- * De facto custodian (SC Code § 63-15-60 (2012), also Kentucky, Indiana)
- Person acting as a parent (DRL 75-a(13))
- * In loco parentis (common law)
- Person in parental relationship (Edl 3212, PHL 2164)
- * Also Blood, Marriage, or Adoption and Degree of Consanguinity

informal Custody

- No parent consent in writing
- Written designations (Gen. Oblig. 5-1551ff)
- Schooling and school enrollment (Edl 3202, 3212; Department of Education regulation 8 NYCRR 100.2 (y)(3)Section 100.2(y)
- Types of Medical Care: emergency care, immunizations, routine, major
- Records Birth Certificate, Social Security Card, Passport
- But even without statutory authority kin often consent to medical care

No Court Involvement (Informal Custody)

- * Person in Parental Relation
- Circumstances Covered in Statutes (Ed. L. 3212; P. Health Law 2164)
- * "a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, or have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown."
- * See http://www.p12.nysed.gov/sss/lawsregs/3212.html; http://codes.findlaw.com/ny/public-health-law/pbh-sect-2504.html

No Court Involvement (Informal Custody)

* Parental Designation (Gen.Oblg. 5-1551) (one month; up to six months)

Renewable and also Springing!

More than one month notarized

Notarization from Outside of U.S.

See Handout: Six Month Designation Form, and http://www.ocfs.state.ny.us/main/Forms/kinship/OCFS-4940%20Designation%20of%20Person%20in%20Parental%20Relationship.pdf

Legal Custody and Guardianship

- Legal Custody (not much statutory authority)
- Guardianship (of the person and property)
 - Temporary guardianship
 - Standby guardianship
 - Permanent guardianship
 - Kinship guardianship

Custody and Guardianship

See Handout for Comparison of Custodial Arrangements:

- Similarities
- Procedures
- Powers



When To Choose Custody or Guardianship

- Legal custody proceedings may be more appropriate for disputes between spouses or for non-parents when parents are involved
- Guardianship proceedings may be more appropriate for providing parental authority to a non-parent who cannot consult with parent (death, mental illness, etc.)
- But Guardianship Procedure More Complex

Federal Law Distinguishes

Examples:

- Child Welfare Laws fund "guardianship" Permanency Centers, https://ocfs.ny.gov/main/view_article.asp?ID=1404
- Free Application for Federal Student Aid (FAFSA)
 - Non-dependent versus dependent child

Direct Custody

- FCA 1017 "N Docket, 1017, Direct"
- Physical Custody to Caregiver
- State Retains Decision Making Authority
- No Foster Care Payment
- County Memo of Agreement

Standby Guardianship SCPA 1726

NYS: Since 2000, parents, guardians, legal custodians, and primary caretakers who cannot locate the natural parents can name a standby guardian

- via a petition to Family Court or to Surrogate's Court,
- or by a written designation that is witnessed.

NYS: The authority of a standby guardian becomes effective upon the named springing event:

- debilitation
- incapacity
- or death

Kinship Guardianship Assistance Program – KinGAP SSL 458-a-f.

- Allows kinship foster parents to apply to local districts for an ongoing subsidy outside of foster care or adoption
 - then move the court to be appointed as a guardian



Kinship Guardianship Assistance Program - KinGAP

- Foster Care Block Grant
- Foster child, after six months but also permanency and fact finding hearings for abused, neglected, or destitute children
- Rule Out (Adoption, Return to Parent = compelling)
- In Best Interests Agency Determination
- Agreements (contracts)
- Legal Fees \$2,000
- Guardianship Can Be Challenged
- 2018 Expanded age of children 2018, amends definition of relative guardian
- See Kinship Guardianship Assistance Practice Guide (OCFS), http://www.ocfs.state.ny.us/kinship/KinGAP_Practice_Guide.pdf

Approved and Certified Foster Care

- Kinship foster care (certified/approved)
- Exit Kinship guardianship subsidies program (kingap) (funding)
- Exit- Adoption subsidies program
- Exit Conversions to Article Six (FCA 1055b, 1089a)
- Exit Return to parents

Adoptions - DRL 109-112

- Adoptive Parent has full rights and duties
- But enforceable "open" adoptions if it is a condition of consent to adoption
- Grandparent visitation post adoptions
- Exit foster care with adoption subsidy
- Tax credit
- Will Lose Non-Parent Grant!

4. Recent Kinship Laws - Federal

Families First Prevention Services Act (2018)

- * The central feature of FFA is that states will now be able to use funds derived from Title IV-E of the Social Security Act the entitlement that pays for child welfare for "time-limited" services aimed at preventing the use of foster care in maltreatment cases. Currently, IV-E is only allowable for spending on foster care placements and for assistance to adoptive families.
- * Candidates for entry into foster care, can get 12 months preventive services.
- * Kinship Navigator Funding, but requirements are a problem.
- But state option whether to seek federal funding for preventive services; do not become available until 10/1/19;
 maintenance of effort requirement and significant limitations on what types of preventive services may be funded limits on who can receive them and evidence-based limitations; significant reporting requirements.

Consolidated Appropriations Act (2018)

* Omnibus Consolidated Appropriations – page 955 (\$20,000,000 for kinship navigators)

4: Since 2000 – NYS Kinship Laws

- SCPA § 1726 (Standby Guardian)
- Gen. Oblig. L. Title 15-A § 1551 ff. (Parental Designation)
- * DRL § 72(2) (Grandparent Ext. Circ.)
- FCA § 1017 (Notice and Placement Options)
- SSL § 392 (LDSS required to inform about benefits)
- FCA § 657 (Enrollment/Medical Guardianship, Custody)
- FCA § 1028-a (Petition to Become Foster Parent)
- * SSL § 458-a-f (KinGAP)

NYS: Since 2000 – Kinship Laws

Case Law:

Matter of Suarez v Williams 2015 NY Slip Op 09231 (NYS Ct. App, 2015)

See online CLE manual for more cases

Regs:

- 8 NYCRR 100.2 (y)(3) Section 100.2(y),
 Determination of student residency and age
- 18 NYCRR 430.11(c)(4), due diligence in notification

NYS: Since 2000 – Kinship Laws

Agency Commissioner Communications:

- OTDA 05-INF-24 (re-issue) (custody and guardianship)
- * OTDA 08-INF-16 (good cause)
- OCFS 10 OCFS-INF-03 (notice to relatives, writing)
- OTDA 12-ADM-01 (information to Caregivers)
- * OCFS 14-OCFS-LCM-15 (kinship foster care data adds "approved")
- 18-OCFS-ADM-03 (expansion of KinGAP)

5. Emerging Issue: Deportation of Parents

"Emergency Preparedness for Families" NYS BAR – April 12, 2017

Website:

http://www.nysba.org/store/events/registration.aspx?event=oER51

Also see Navigator section on deportation.

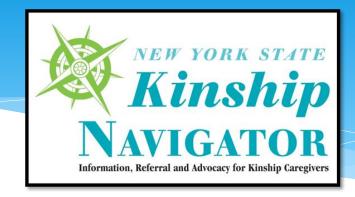
Strategies for Leaving Children in Care of Kin

"Emergency Preparedness for Families" NYS BAR – April 12, 2017

Website:

http://www.nysba.org/store/events/registration.aspx?event=oER51

Also see Navigator section on deportation.



Deportation Legal Fact Sheets

- * http://www.nysnavigator.org/?page_id=1897
- * Summary of Kinship Navigator Fact Sheets and Resources Related to Deported Parents and the Care of Children
- * Caregivers Rights With Respect to Obtaining Vital Documents
- * Enabling New York's Kinship Caregivers Custody, Guardianship, Parental Designation Basic Procedure
- * Kinship Caregivers: Comparison of Custody and Guardianship
- * Notarization of Documents in a Foreign Country
- * Parental Designation of Childrens Caregiver Thirty Days or Less
- * Parental Designation Form of Children's caregiver for Six Months (Updated December 2017)

- Below are materials authored by other organizations related to Deportation of Parents
- Policies on Children of Deported or Detained Parents – from OCFS
- Be Sure Your Child is Cared for and Safe
- * Guardian-Designation of Person in Parental Relationship (OCFS-4940)
- Emergency Plan in Case of the Detention of Deportation of Family Members
- Plan de Emergencia en Caso de la Dentencion o Deportacion de Familiares
- Resource Sheet for Incarcerated Parents and Their Children's Caregivers

Federal Agencies

- * Homeland Security or U. S. Citizenship and Immigration Service (USCIS)
 - May grant Temporary Protective Status (TPS)
- ICE (Immigration and Customs Enforcement)
 "Enforcement and Removal Operations" (ERO)
 - Immigration police (20,000)
 - * Immigration detention is the practice of incarcerating immigrants while they await a determination of their immigration status or potential deportation. In 2016, the United States government detained nearly 360,000 people in a sprawling system of over 200 immigration jails across the country.

Federal Recent Court Decisions

* Jennings v. Rodriquez, U. S. Sp. Ct. (Feb. 27, 2018)

No bail for detained immigrants

Types of "Illegal" Immigrant Parents

1. Temporary Protective Status (TPS)

- * El Salvador Sept. 9, 2019
- * Haiti July 22, 2019
- * Honduras July 5, 2018
- * Syria Sept. 30, 2019

2. Undocumented Parents

3. Deferred Action for Childhood Arrivals Program (DACA)

Deportation is not Abandonment

Destitute Child OCFS - 12-OCFS-ADM-08

"If the parent is in the U.S. undergoing deportation proceedings, every effort should be made to have discussions with the parent in regard to a placement and permanency plan for the child, including the possibility of executing a voluntary placement agreement. In addition, the parent should be asked if there are any relatives or other individuals who may be able and willing to obtain custody or guardianship of the child or become a foster parent to the child, if financial/medical support is needed to care for the child. If the child would satisfy the definition of an abused or neglected child, the LDSS should proceed with an Article 10 proceeding. Parental rights should not be terminated simply because the parent is being deported, unless there are other issues present that would preclude the child from being reunified with the parent and would qualify the child as being permanently neglected or abandoned."

Reports to ICE

OCA Advisory Memo No. 3, Oct. 27, 2017 Adverse Consequences to Family Court Dispositions

- New York Order of Protection Registry linked to FBI's National Crime Information Center (NCIC) (ICE can access)
- Fingerprinting for Background Checks in Family Court
 -Division of Criminal Justice Services (DCJS) will
 contact ICE if discovers prior deportation.
- 17-OCFS-ADM-06 affirms OCFS does not share with feds (18 NYCRR 403.7(b)

Outreach

- Join KinCare Coalition Listserv
- Use Permission to Contact Form
- September is Kinship Care Month
- Kinship Event Next September, 2018

HELP KINSHIP CAREGIVERS BY REFERRING CAREGIVERS TO KINSHIP SERVICES!



Contact

Gerard Wallace, Esq.

gwallace@albany.edu

Questions? Comments?