

# Kinship Permanency Outcomes:

Choosing between Adoption  
and Kinship Guardianship  
Assistance (KinGAP)



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# ABA Center on Children and the Law



**Center on  
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Access to Justice for Children & Families

- **Goal:** to promote access to justice for children and families
- Nonprofit grant-funded program of the American Bar Association that uses the law to help child welfare and court systems work more effectively
- Informs and improves legal practice through technical assistance, training, research, and other efforts, making access to justice real for the nation's children and families

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# How to Achieve Successful Kinship Placements

- Assess **safety** of placement and kin caregivers ability to meet needs of the child
- Help relatives make **informed decisions** about how best to care for the child and what is best for the family
  - Written materials for relatives to help understand their role and options
    - *Having a Voice and a Choice: New York State Handbook for Relatives Raising Children*
    - *Know Your Options: Relatives Caring for Children*
    - *Know Your Permanency Options: The Kinship Guardianship Assistance Program*
    - (KinGAP)
    - Available at: <https://ocfs.ny.gov/kinship/>
  - Review and discuss written materials
  - Refer to NYS Kinship Navigator or attorney for assistance

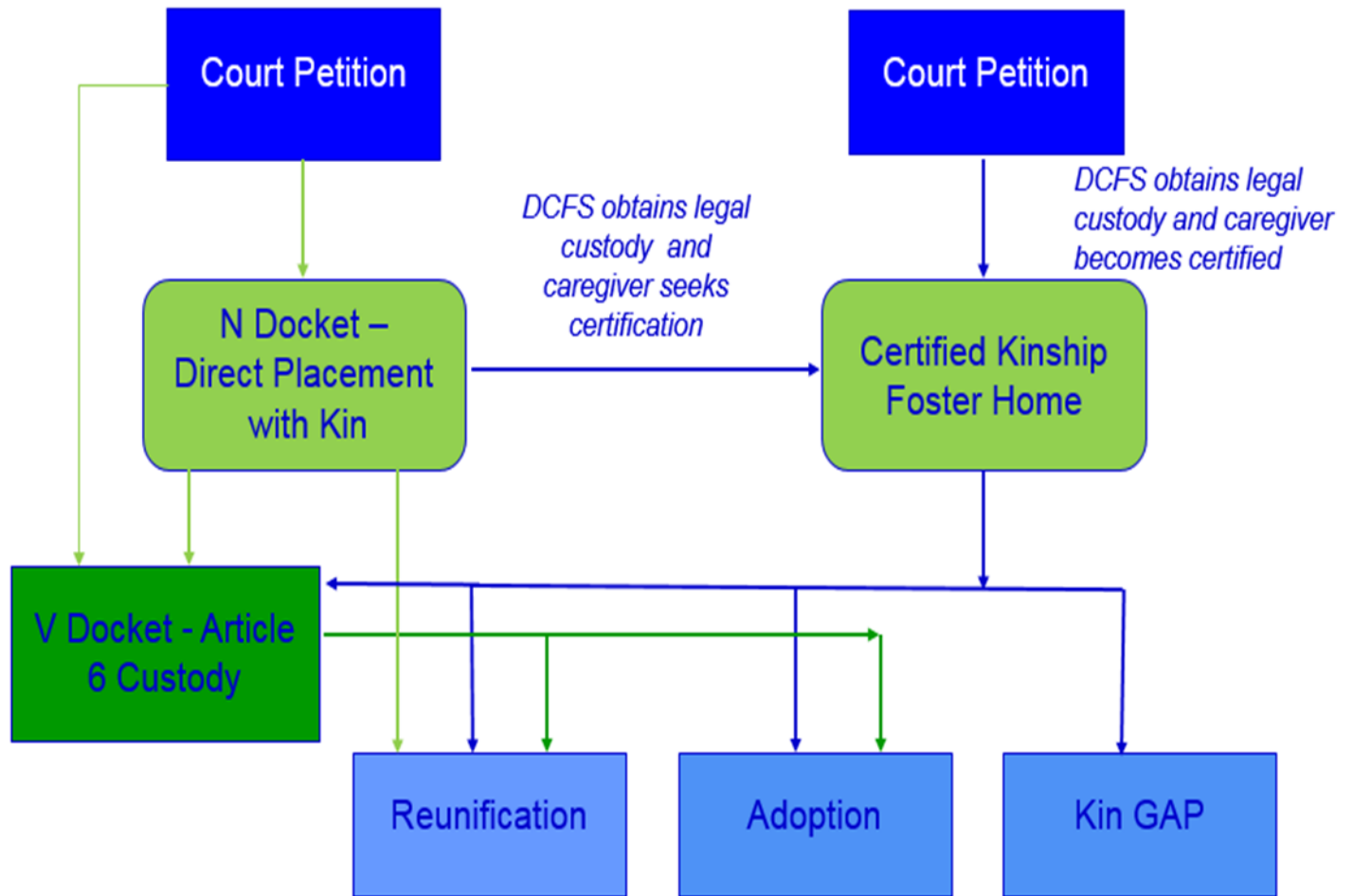


# How to Achieve Successful Kinship Placements

- **Engage** all parties in **decision-making**: parents, child, kin caregivers
  - Team Decision Making (Family Group Decision Making)
- Assess kin caregiver's **commitment to the child**
  - Are their expectations realistic
  - Are they in it for the “long haul”
  - Do they support reunification, when safe
- Assess caregivers **relationship with parents**
- **Best interests** of the child prevails



# Kinship Flowchart Onondaga County



# TANF vs. Foster Care vs. KinGAP/Adoption Financial Benefits

<b>TANF Age 6-11</b>	<b>Foster Care Age 6-11</b>	<b>KinGAP/Adoption Age 6-11</b>
<p><b>One child</b> living with relative outside foster care &amp; relative does not receive any Public Assistance or subsidized rent</p> <p>Approximately \$ 431/month</p>	<p><b>One child</b> placed in foster care with a fully certified relative *Includes clothing allow \$ 21.86/day R1*</p> <p>Approximately \$655/month</p>	<p><b>One child</b> living with a relative under KinGAP or Adoption subsidy 100% \$21.86/day 95% \$20.77/day</p> <p>Approximately \$ 655/month</p>
<p><b>Two Children</b> living with relative outside foster care &amp; relative does not receive any Public Assistance or subsidized rent</p> <p>Approximately \$ 616/month</p>	<p><b>Two Children</b> placed in foster care with a fully certified relative \$ 43.72/day R1*</p> <p>Approximately \$1311/month</p>	<p><b>Two children</b> living with relative under KinGAP or Adoption subsidy 100% \$43.72/day; 95% \$41.53/day</p> <p>Approximately \$ 1311/month</p>
<p><b>Three children</b> living with relative outside foster care &amp; relative doesn't receive Public Assistance or subsidized rent</p> <p>Approximately \$ 794/month</p>	<p><b>Three Children</b> placed in foster care with a fully certified relative \$ 65.58/day R1*</p> <p>Approximately \$1967/month</p>	<p><b>Three children</b> living with relative under KinGAP or Adoption subsidy 100% \$65.58/day; 95% \$62.30/day</p> <p>Approximately \$1967/month</p>



# Federal Kinship Guardianship Assistance (GAP)

- State **option** to use Title IV-E for eligible children who leave foster care for legal guardianship with a relative
- States must use state and local dollars to match federal dollars
- Payments available until child turns 18 (sometimes 21)
- States must use state and local dollars to match federal dollars
- Children are eligible for Medicaid
- GAP remains in effect if guardian moves to another state
- If child eligible for federal adoption assistance when placed with guardian, child continues to be eligible if guardian wants to adopt the child later
- To date: 35 states, DC and 8 tribes have approved plans



# Federal GAP: Case Plan & Suggested Court Findings

- Once program is established, states must document in case plan and court should make findings on:
  - Why return home and adoption are not appropriate
  - The reasons for any separation of siblings
  - The reasons why a subsidized guardianship is in the child's best interests
  - The ways in which the child meets the eligibility requirements
  - Efforts to discuss adoption with kinship caregivers and guardianship with parents





# NYS KinGAP Law: Eligibility Criteria

- **Soc. Serv. Law § 458-A – F: Kinship Guardianship Assistance Program**
  - Must live for at least 6 consecutive months in home of prospective relative guardian; and
    - return home or adoption are not appropriate permanency options;
    - child demonstrates a strong attachment to relative;
    - relative guardian has a strong commitment to caring permanently for the child; and
    - child over 14 has been consulted; over age 18 has consented



# NYS KinGAP Law: Eligibility Criteria

- Relative must fully certified or approved foster parent of child
- Relative is defined as a person who is:
  - related by blood marriage or adoption,
  - related to a half sibling of the child in foster care or
  - has a positive relationship with the child, including, but not limited to a stepparent, godparent, neighbor, or family friend
- The fact finding hearing and 1<sup>st</sup> permanency hearing must be completed
- Kin GAP payments until child is 21, if the child qualifies (school, employed full time, etc.)
- **See: 11-OCFS-ADM-03 - Kinship Guardianship Assistance Program**



# Benefits of KinGAP

- Legal relationship that does not require new role definitions and allows for the existing family relationships to continue
- Allows birth parents to remain part of the child's life (if the child not legally freed) and allows birth parents to retain rights to visit and to consent to adoption
- Eliminates monthly caseworker visits and regularly scheduled court appearances
- Allows relative guardians to manage birth parent–child interactions without agency oversight
- Provides guardians with authority to consent to medical treatment, educational plans, and other daily decisions that typically require parental permission
  - Not allowed to consent to adoption, major surgery and marriage
- Allows the family to continue receiving Medical Assistance or other medical coverage for the child
- Increases child's sense of family stability without requiring the termination of parental rights
- Allows children to retain rights of association with their siblings, grandparents, and other extended family members



# KinGAP – Discussion Questions

- What are some of the barriers to more exits to Kin GAP?
- How does the block grant funding effect decisions to pursue Kin GAP as opposed to uncapped funding for adoption subsidy?
- Are there cases that are typically more appropriate for Kin GAP than others?
- What are the pros and cons of Kin GAP?
- Kin GAP tends to be more appropriate for:
  - children with strong bond to parents and unwilling to be adopted
  - kinship caregivers unable or unwilling to adopt
  - parents with disability that makes them unable to parent but still have a good relationship with child
  - Parents can't care for child but not sufficient TPR grounds
  - Sibling groups
- Carefully assess goal of Kin GAP for any young child



# Adoption – Overview

- Birth parents' parental rights are terminated, because either:
  - the parent surrendered his/her parental rights;
  - the court terminated them or
  - the parent died
- Parent loses all rights and responsibilities including:
  - right to visit,
  - child support obligations
  - right to later claim custody of the child
- Decision to terminate determined on a case-by-case basis, based on best interests of the child
- The adoptive parent becomes the child's legal parent



# Adoption – Overview

- Prospective adoptive parent must be approved
  - Background checks, home study, medical exams and training
- Some relatives do not feel adoption is right for them; as they do not want to change the nature of their relationship with the child or parent
- Child over age 14 must consent to adoption
- Conditional surrenders may allow post-adoption contact between birth parents & child
- Parental rights can be restored in narrowly defined circumstances
- See: Adopting a Child from Foster Care in New York State - <https://ocfs.ny.gov/main/publications/PUB-1128.pdf>



# Benefits of Adoption

- More permanent option, parent cannot petition for a change in status unless their parental rights are restored
- Right of inheritance, medical insurance all apply to adopted child
- More control over whether the biological parent can have access to the child
- Eliminates monthly caseworker visits and regularly scheduled court appearances
- Adoption subsidy in most cases
- Provides adoptive parents to consent to medical treatment, educational plans, and all decisions with regard to the child



# Rights, Responsibilities, Benefits: GAP vs Adoption

RESPONSIBILITIES/ RIGHTS	KINSHIP GUARDIANSHIP ASSISTANCE	ADOPTION
<b>Legal</b>	<p>Relative guardian has right to physical custody and control of the child. They are responsible for day-to-day care, supervision and daily decision-making.</p> <p>Birth parents may petition the Court for return of child if prove change in circumstances that allow for proper care of the child.</p>	<p>Adoptive parents have full legal, parental &amp; financial responsibilities for the child. All decisions made by adoptive parents.</p> <p>Adoption cannot be overturned based on a change in birth parents' circumstances.</p> <p>Adoptive parent(s) can claim child as a dependent for tax purposes. A substantial lump sum federal tax credit may be available for expenses related to the adoption.</p>
<b>Birth Parents</b>	<p>Suspends the birth parents decision-making responsibility. Birth parents rights may or may not be terminated, but not necessary.</p> <p>Certain rights and responsibilities i.e. child support, consent to adoption, visitation may be retained by birth parents.</p>	<p>Terminates the child's legal relationship with the birth parents. However contacts may continue with the agreement of all parties (conditional adoption).</p>
<b>Daycare</b>	<p>Daycare eligibility based on <u>family's</u> income however, KinGAP subsidy not included when assessing income.</p>	<p>Daycare eligibility based on <u>adoptive parent's</u> employment, family size and income.</p>





# Rights, Responsibilities, Benefits: GAP vs Adoption

RESPONSIBILITIES/ RIGHTS	KINSHIP GUARDIANSHIP ASSISTANCE	ADOPTION
<b>Legal Fees</b>	May receive a one-time payment for legal fees related to receiving guardianship up to \$2,000 per child.	Adoption finalization costs may be covered under subsidy contract up to \$2,000 per child.
<b>Health Care Coverage</b>	If receiving Guardianship Assistance, child eligible for Medicaid, unless child is a non-qualified immigrant otherwise may be eligible for Child Health Plus or State KinGAP Medical Subsidy.	Child may receive Medicaid through subsidy agreement. Child may be entitled to coverage on adoptive family's health plan.
<b>Independent Living Services and Education and Training Vouchers</b>	If child age 16 or older when enter guardianship, eligible for independent living services such as vocational training and may apply for the ETV for up to \$5,000 toward post-secondary education or vocational training. Now up to age 26.	If child age 16 or older when adopted, eligible for some independent living services such as vocational training and may apply for the ETV for up to \$5,000 toward post-secondary education or vocational training. Now up to age 26.

\* Chart developed in partnership with Erie County DSS



# Post Permanency Contact with Parents

- GAP order can establish visitation schedule with biological parents
- GAP agreement should name the successor guardian, who could qualify for KinGAP subsidy, if the guardian can no longer care for the child
- Post Adoption Contract Agreement
  - If rights terminated by a conditional surrender - parent voluntarily gives up their parental rights - certain conditions such as contact may be included in the order
  - All parties, including adoptive parent, must agree to terms of a conditional surrender
  - If problems arise, case can be taken back to family court for review by a judge.
    - The judge will make a decision that supports the best interests of the child



# Choosing the Right Permanency Goal

- Must be decided on case by case basis, engage all stakeholders in decision
  - Include parents and children in decision
- Must give caregivers all information on permanency options from the beginning
- Assess permanency hierarchy, with reunification as first goal
- Weigh benefits for child – inheritance, education assistance
- Ultimately what is best for the child?



# Kinship Resources

- OCFS Kinship Resources - <https://ocfs.ny.gov/kinship/>
- OCFS Adoption Resources – <https://ocfs.ny.gov/adopt/process.asp>
- NYS Kinship Navigator - <http://www.nysnavigator.org/>
- OCFS Training Available in your county -- Presenting Options to Kin/Relative Caregivers
- Grandfamilies State Law and Policy Resource Center - [www.grandfamilies.org](http://www.grandfamilies.org)
- Generations United - [www.gu.org](http://www.gu.org)
- ChildFocus - <http://childfocuspartners.com/>

