

# Kinship Care:

## *Know Your Rights as a Relative Caregiver Taking Care of a Child*

If you are asked to take care of a relative such as a grandchild, nephew or niece, this information may be helpful. Some items may be especially relevant if you been asked to do so by Child Protective Services.

### **If the child lives with you but there is no order giving you legal custody of the child:**

- You can take care of the child without getting a custody order from court. The parent retains legal custody and must help you enroll the child in school and obtain medical treatment for the child.
- You may be able to receive some public assistance for the child, such as medical assistance (Medicaid or FAMIS), child care subsidy, or cash assistance (called Temporary Assistance for Needy Families, or TANF). These types of assistance are based on the child's income. A larger TANF grant may be available if your total household income is very low. Apply in person through your local department of social services or online: <https://commonhelp.virginia.gov/>
  - The addition of a child to your household, even if you previously made too much money to qualify, may allow your household to be eligible for food assistance (SNAP). Your statement that you are the relative caretaker of the child is sufficient to establish eligibility, but you may need paperwork proving that relationship. The eligibility worker will help you determine what documents you need.
  - *If you receive public assistance for the child, the state will seek child support payments from the parents of the child as reimbursement.*
  - If you receive benefits for the child in your care, the child's parents can no longer receive benefits for that child.
  - If you are not a citizen, but the child was born here or is a naturalized citizen, the child will be eligible for benefits even if you or the parents are not.
- If you are caring for a child who is not a relative, some forms of assistance may not be available. Some localities provide "general relief" to help with some expenses for non-relative caretakers.
- Speak with the child's physician to find out what paperwork he or she requires to provide medical care for the child. Some physicians require a custody order or power of attorney.
- The child in your care has a right to attend the public school where you live. If you do not have a custody order from a court, the school may require more documents (in addition to those such as birth certificate and vaccination records) to enroll the child. Check with your local school division to learn its requirements, which may include:
  - An affidavit (the school may provide a form) signed by you and the parent describing the arrangement and explaining why the parent cannot care for the child; and stating that you will notify the school within 30 days of the child going back to the parent.
  - A power of attorney giving you authority to make educational decisions for the child. The power of attorney is a signed document in which the parent gives you the legal right to make decisions for the child that a parent would usually make.
  - Something in writing from the local Department of Social Services (or Child Protective Services) stating it is in the best interest of the child to live with you and that the arrangement serves a legitimate purpose.

### **If you seek a court order giving you custody of the child who lives with you:**

- You can file a petition for custody in the local juvenile and domestic relations court asking for legal custody. After you file, the court will serve a copy of the petition on both parents. A court

hearing will be scheduled, and you and the parent or parents must appear at that hearing. If you and the parent or parents have agreed that you will take legal custody of the child, the judge will usually enter a Consent Order without much testimony.

- Once the custody order has been signed by the judge, you should get at least two (and probably more) certified copies from the clerk. You can use the custody order to enroll the child in school and obtain medical treatment for the child, as well as enrollment for activities such as sports.
- An order giving you legal custody makes easier to become eligible to receive public assistance, such as Medicaid, FAMIS, food assistance (SNAP), and Temporary Assistance for Needy Families (TANF). (See “If the child lives with you...” above for more information about applying for public benefits.) Your statement that you are the relative caretaker of the child is sufficient proof to establish eligibility, although you may need a copy of the custody order. *You should know, however, that if you receive public assistance the state will seek child support payments from the child’s parents as reimbursement.* If you have a joint physical custody arrangement with the parents, you will need to work with the local department of social services to see which of you should receive which benefits for the child.
- Whether or not you or the child are eligible for public benefits, if you file for legal custody in court, you can also file a petition asking the court to order the child’s parent or parents to pay you child support. The amount of child support will depend on factors such as the parent’s income and what is needed for the child.

**If the child is in foster care and you want to become a foster parent for the child:**

- You may become a foster parent to your relative child, if the child has been removed from the birth parent(s) by the state. Before you can be approved as a foster parent, you must pass background and criminal records checks, and undergo training.
- If you become an approved foster parent, the child will be in the legal custody of the local department of social services but in your physical custody. There will be court hearings about the child every few months.
- Relative foster parents are entitled to monthly maintenance payments from the department of social services. Children are eligible for services based on their individual needs. Foster care payments are substantially higher than TANF payments.
- Since the local department of social services will have legal custody of the child, they will be in charge of making many decisions about the child, though you and the child’s parents will have some say as well. The case worker will be responsible for enrolling the child in school and arranging for medical care.
- Eventually, the court will make a decision about whether the child will be returned to the birth parent(s). If not, you may request custody of the child (see “If you seek a court order...” above). Or, if the child can’t be returned home—for instance, if the parents relinquish their rights, or the state terminates their rights—you may consider adopting the child.
- A relative foster parent who gains legal custody of a child who for legal reasons cannot be adopted, may qualify for “KinGAP” support payments. Ask your caseworker if you qualify.

***If you have questions about your rights as a kinship caregiver, contact an attorney. If you cannot afford to pay an attorney, contact your local legal aid program: [www.valegalaid.org](http://www.valegalaid.org).***



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