



# The Rights of Relatives in Family Court

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If a parent cannot care for his or her child, relatives may want to step in. If you are a relative and find yourself in this situation, here are some things you should know about your legal rights.

## Definitions of key terms used in this guide

- **Custody** (KUS-to-dee): To have custody means to be in charge of someone. There are two kinds of custody: physical and legal. Often, the same person has physical and legal custody – but not always.
- **Physical custody** is when an adult is responsible for a child and takes care of the day to day needs of the child. Usually the child lives with this adult.
- **Legal custody** is when an adult is responsible for making important decisions about the life of a child, such as medical decisions or decisions about education and religion. Only an adult with legal custody can make these decisions. An adult with legal custody is called a **custodian**.
- **Guardianship** (GAR-dee-an-ship): There are two kinds of guardianship: guardianship of a person and guardianship of property. This guide deals with guardianship of a person, which is when an adult takes care of someone who is unable to take care of himself or herself. The person is usually a child. A guardian is responsible for the child, cares for the child, and makes decisions about the everyday life of the child. Guardians have **physical custody** and **legal custody** over a child.

- **Kinship foster care** is when a relative becomes a foster parent to a child who is placed in foster care. The relative is then called a **kinship foster parent**. A foster parent has physical custody of the child. The **Administration for Children's Services (ACS)** has **legal custody**. ACS used to be called BCW or CWA. ACS will give the kinship foster parent money every month for the care of the child.

## What is the difference between custody and guardianship?

In New York State, there are very few differences. However, in other states, there are big differences between the two. If you are planning to move, you should find out about the laws in the state where you are going. This will help you decide whether you want to **file** (ask) for custody or guardianship.

Some health insurance policies require the adult to have guardianship in order to provide coverage to the child. Others require legal custody. If you want the child to be covered by your health insurance, you should check to see which status the policy covers.

Sometimes courts prefer to give guardianship of a child rather than custody to people who are not parents, such as grandparents.

**Everything answered about custody in this guide also applies to guardianship, unless otherwise specified.**

## How do I get custody?

You file a **petition for custody** in the borough where the child has lived for the last six months. A petition for custody is a written request to become the custodian of a child. Custody decisions can be made in Family Court or Supreme Court. In Supreme Court there is a fee to start a case; in Family Court it is free.



the child has been harmed by continued domestic violence in the home; or there is substance abuse in the home of the parent. It might also mean that the non-parent (a person who is not a parent) has been caring for the child for a very long time. If a grandparent has been caring for a child for two years, it is automatically considered to be an extraordinary circumstance.

If the judge decides there is an extraordinary circumstance, he or she will then decide where it will be best for the child to live. This is called **best interests**. If there are no extraordinary circumstances, the judge will give the parents custody.

## How do I become a guardian?

You file a **guardianship petition** in either Family Court or Surrogate's Court. This is a request in writing that asks the court for guardianship. In Surrogate's Court there is a fee to start a case; in Family Court it is free.

As part of the process, the judge may order that a report be written about the parent and non-parent. This report is called a Court Ordered Investigation (COI). A caseworker from the Administration for Children's Services (ACS) will visit the homes of both people and write a report to the judge about what the homes were like and with whom the caseworker spoke.

## Can a parent get the child back?

If someone else has custody or guardianship over a child, and the parent wants to get the child back, they have to file a petition in court to ask for the child back.

Please note: Even though the caseworker is from ACS, it does not mean that someone has said that you have hurt your children.

## Are there special rules for relatives to get custody of a child?

Yes. When a judge is deciding a custody case between a parent and someone who is not a parent, the judge will make two decisions.

First, the judge will decide whether there are **extraordinary circumstances**. Examples of extraordinary circumstances are when a court has determined that there has been abuse or neglect;

## How do I become a kinship foster parent?

To become a kinship foster parent, contact ACS. ACS is located at 150 William Street, 2nd floor. You can also call ACS at (212) 543-7692. If you know what foster care agency has care of your relative, you can also contact that agency directly.

Please note: When ACS removes a child from his or her home, the agency has to look for relatives, including grandparents, to take care of the child. Sometimes ACS cannot find the relatives. If ACS does not contact you, let the caseworker know that you would like to become a kinship foster parent for the child.

## If I am a kinship foster parent, can I receive money from ACS?

Yes. Foster parents receive foster care subsidies to help take care of foster children. Kinship foster parents receive the same foster care subsidies as other foster parents.



## If my relative is in foster care, can I ask for custody?

Yes. If your grandchildren or other relatives are in foster care, you have the right to **petition for custody** in Family Court.

## If I have custody, can I receive money from ACS?

No. Only foster parents can receive money from ACS to take care of the child. If you are the kinship foster parent, you will be able to receive a foster care subsidy from ACS.

## If I have custody, can I become a kinship foster parent so I can get money from ACS?

No. You cannot become the kinship foster parent after you already have received a custody order from the court. If you have custody, you may be able to receive child support from the parents or public assistance. More information on both of these options is below.

## If I have custody of my relative, can I receive child support?

Yes. If you are responsible for the full-time care of your grandchild, or you were given legal custody or guardianship, you have the right to file a petition for child support. You must file the petition in the borough where the child lives or where the parents live.

## What happens if I am on public assistance?

If your grandchild is living with you and you receive **public assistance** (welfare), you may be able to put the child on your public assistance budget. If the child is on your public assistance budget, the Support Collection Unit (SCU) will file a petition for child support for you. No matter which borough you live in, the case will be in Manhattan Family Court, located at 60 Lafayette Street.

## What happens with the child support money if I am on public assistance?

While you are on public assistance, you will not get the entire child support amount. The SCU will keep the support and give you a \$50 “pass-through” on your budget for your household. This means you will only get \$50 even if you have custody of more than one child, and even if the child support order is for a lot more money.

If you close your public assistance case, you **MUST** inform the SCU. You can then ask to have your case moved to the Family Court of the borough where the child lives. You will then receive the entire child support amount. However, if the parent paying child support has missed payments that were supposed to be made to the SCU, they will be paid first. Money the parent owes is called **arrears** (a-REERS). You will receive child support when all the arrears have been paid.

## Can I get public assistance for my grandchild or relative if I am not on it?

Yes. Relatives or other people caring for a child that is not their own, can apply to receive a **child only grant**. The child only grant is money that is meant to help support the child. It does not matter how much money you earn; you can still receive the child only grant.

## As a grandparent, do I have a right to visit my grandchild?

Yes. After a death, divorce, or other important event in a family that changes things, grandparents sometimes feel that they are losing contact with their grandchild. When this happens, grandparents who are already close to the child are allowed to ask for **visitation**. Visitation is when the court says when and how you can see a child.

Note: Grandparents are the only relatives that have the right to petition for visitation in Family Court.

## How do I ask for visitation?

- You must file a petition for visitation in the Family Court in the borough where the child has lived for the past six months.
- After you have filed the petition, you will get a date to go back to court. This may take a couple of months.

- Before the court date, someone (not you!) must serve the papers on the parent who has custody of the child. The person serving the papers must be over 18 years old and not involved in a legal part of the case. That person must sign an **Affidavit** (aff-i-DAYV-it) **of Service**. This must be **notarized** (NO-tar-ized). Please see the LIFT guide “Serving Court Papers.”
- You must bring the affidavit to court with you.
- A judge will make the decision about visitation based on what has happened in your family and what is best for the child. The judge may look at things such as the importance of the grandparent in the life of the child and if the grandparent is prepared to respect the relationship the child has with his or her parents.



## Can I visit my relative if he or she is in foster care?

Yes. You have the right to file a **petition for visitation** in Family Court if your relative was placed in foster care because:

- The parents decided to put the child there, or
- ACS filed an abuse or neglect proceeding

Before you file a petition for visitation, speak with the caseworker. Sometimes the caseworker will arrange for you to visit without you having to go to court.

## Resources for relative caregivers



New York State Kinship  
Navigator  
877-454-6463  
Weekdays (10 am – 4 pm)  
[www.nysnavigator.org](http://www.nysnavigator.org)

AARP Grandparent Information Center  
888-687-2287  
[www.aarp.org/grandparents](http://www.aarp.org/grandparents)

NYC Department for the Aging Grandparent  
Resource Center  
2 Lafayette Street, 15th Fl.  
New York, NY 10007  
212-442-1094/1000  
212-442-1071

MFY Legal Services  
Kinship Caregiver Law Project  
212-417-3850

For additional referrals in your community, please  
call our Legal Information Hotline: 212-343-1122.

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*This document should not take the place of a consultation with  
a lawyer. LIFT encourages all individuals involved with the  
Criminal and Family Court systems to consult with a lawyer.*

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