

To the Child  
Kinship Care Means  
“Home”

**Virginia's Legal Options For a Relative  
When a Child Cannot Live With His Parents**





# What is Kinship Care?

Kinship care is a term defined in the Code of Virginia as “the full time care, nurturing and protection of children by relatives.” This brochure outlines the legal options for those relatives when a child can no longer live with his or her parents.

*Without proper legal documentation, a grandparent or other relative may have difficulty enrolling a child in school and signing any paperwork for medical care. It is always good to talk to an attorney about these matters. This brochure is not intended to provide legal advice. However, the information in it may help you decide what questions you need to ask and legal options to consider. You may contact the Virginia Lawyer Referral Service at 1-800-552-7977 for assistance.*



# When Placement Is Given By the Court

Legal custody is granted by a formal order of the Juvenile and Domestic Relations District Court judge. The judge may award custody to the kinship care provider or to the local department of social services. Depending on the specifics of each child's situation, the petition for custody could be filed in the city or county where the child or family lives.

## **Legal custody to kinship care providers**

When the kinship care provider has legal custody of a child, the care provider has all of the rights and responsibilities of a parent that are specified in the order from the court. These rights commonly include registering children for school, obtaining medical care and accessing certain financial assistance for children. Parents retain some legal rights and may be entitled to regular visits.

The court will not modify or terminate an order granting legal custody of a child unless it finds that a change has occurred in the circumstances of the child or the person who was granted custody. The change of circumstances must serve the best interest of the child.

## **Legal custody to social services**

When a child has been removed from a parent's home and placed in the custody of the local department of social services, the agency may place the child either in a suitable kinship home or in foster care. The foster parent may be a relative or a non-relative.

In foster care, the agency works with the child's parents to return the child home. The agency and the parents have at a minimum 12 months to correct the problems that caused the child to come into foster care. The parents may be ordered to seek assistance for services such as substance abuse treatment, mental health treatment, employment assistance, housing, etc.

If the parents do not correct the problems and the child has been in foster care continuously for 15 of the last 22 months, the agency must move to terminate parental rights unless there is just cause not to.

If parental rights are terminated, Virginia law requires consideration of permanent placement with a relative, including transferring legal custody to the relative.



## Adoption by a relative

Adoption is a permanent arrangement, entitling a child to all of the benefits and rights of a biological child within the adoptive family. Adoption may entitle the child to certain adoption financial assistance, social security, insurance and/or pension benefits.

Adoption can occur only after parental rights have been terminated. This can occur in two ways: involuntary and voluntary. Involuntary means that the local department of social services petitions the court to terminate the parents' rights. Voluntary means that the parents initiate a petition in court or consent to have their rights terminated.

# When Placement Is Given By the Birth Parents

## Parental placement adoption

When a child has been placed by the birth parents with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, and the child has lived with the kinship care provider continuously for at least three years, the kinship care provider can file a petition to adopt. The process works this way:

- The petition for adoption is filed in the Circuit Court in the city or county where the kinship care provider lives.
- The petition along with a written, signed and acknowledged consent to the adoption from the birth parents is filed with the Circuit Court. However, the court may grant the petition without consent if consent is not obtainable or is being withheld contrary to the best interest of the child.
- A home study may or may not be required.
- Some courts allow the relatives to represent themselves in adoption proceedings. The decision to require an attorney rests with the court.



### **Standby guardianship**

For a parent with a terminal or severe illness, a standby guardianship can be a tremendous benefit. It allows the parent to plan for the future of the child and gives the stand-by guardian the authority to act in a manner consistent with the known wishes of the parent.

A parent may appoint a standby guardian either by filing a petition in the Juvenile and Domestic Relations District Court or by completing a written designation to be filed by the guardian when the time comes. In either case, the parent must name both the guardian and the event that will put the guardianship in effect.

## Other Legal Processes

### **Special power of attorney**

A special power of attorney can be used by the child's parents to allow the kinship care provider to handle specific situations for the child when they are not available or when they are not able to handle specific situations.

### **Mediation**

Mediation can be used as an attempt to resolve matters involving child custody. In mediation, a neutral third party helps the

parties in dispute to reach an agreement. The mediator has no power to impose a decision on the parties. Mediation can be ordered by the court.

### **Medical consent**

Virginia law provides that a person, who has been acting as a parent to a child who has been separated from the custody of his parent, may give consent for surgical or medical treatment.

### **Birth certificates**

Virginia law allows a grandparent to request and obtain a copy of the grandchild's birth certificate when the grandparent has proven to the State Registrar that he or she is the grandparent. The grandparent must demonstrate to the State Registrar the need for the child's birth certificate.

## What Kind Of Kinship Care Arrangement Is Best?

Each case is different. Deciding which type of kinship care fits a child's situation requires cooperation between the parties involved. Open and clear discussions, communications and commitment, from everyone involved, is needed to decide what is in the child's best interest.



# Advice From Grandparents Raising Grandchildren

(AARP, The GIC Voice, Newsletter Spring 2004)

**“Protect yourself legally.** *Keep a journal both before and after you get custody. From the day that you suspect you have a problem; you need to keep a journal of everything. Because if something happens, and it will, that’s your most valuable piece of evidence as to the history of your situation. After custody, it will help you document what you have done for the child, just in case the parent comes back to have the custody agreement changed. It shows your character and the level of commitment that you’ve made to the child.*”

**“Get consent from the parents first, if possible.** *Get consent for custody from the biological parents before going to court. Go slowly and carefully with the child’s parents as you do this so you can keep the conflict and the feelings of animosity as low as possible.*”

**“Don’t create barriers between grandchildren and their parents.**

*Regardless of what happened to the children in relation to the parents, that love is still intense. Grandparents must be very careful not to create any barriers that you wish you hadn’t. Always share the things that are going on the children’s lives. You are doing the child, the parent and yourself a disservice if you belittle or put down the parent. Try to be positive.”*

**“Seek help.** *Contact the local department of aging or legal aid office to see if there is legal assistance, support groups, or financial assistance programs for which you are eligible. Let friends and family do things for you. Whatever little thing they want to do, let them do it. Don’t refuse help.”*

**Where to find help?** To find legal help, support groups and other information on raising relative children go to the following Internet Web sites:

[www.vplc.org](http://www.vplc.org)– Virginia Poverty Law

[www.giclocalsupport.org](http://www.giclocalsupport.org)– American Association of Retired Persons (AARP)

[www.vda.virginia.gov](http://www.vda.virginia.gov)– Virginia Department for the Aging

[www.dss.virginia.gov](http://www.dss.virginia.gov)– Virginia Department of Social Services

[www.211virginia.org](http://www.211virginia.org)– Talk to a real person. Dial 211.

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Developed by the  
Virginia Department of Social Services  
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7 North Eighth Street  
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[www.dss.virginia.gov](http://www.dss.virginia.gov)

Thanks for the help and resources that were  
shared to develop this brochure specifically for  
kinship care providers.

#### VDSS Mission Statement

*“People helping people triumph over  
poverty, abuse and neglect to shape  
strong futures for themselves, their  
families and communities.”*

