

Kinship Legal Guardianship

*A permanency option in
Child Protection and Permanency (CP&P) cases*



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Please Note: This booklet is not intended to offer legal advice or legal guidance. You should consult the professionals involved in your child’s case, including the CP&P case manager, the child’s attorney (law guardian) and the attorney for CP&P (the Deputy Attorney General [DAG]). For more information or if you have questions not answered in this guide, contact Mary E. Coogan, Esq., vice president at Advocates for Children of New Jersey and director of the KidLaw Resource Center, at mcoogan@acnj.org.

The **KidLaw Resource Center** offers information, assistance and trainings about the rights of children. The Center provides free fact sheets, manuals and other resources. Staff is available to provide presentations and trainings on children’s legal rights. Visit www.acnj.org for more information.

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Introduction

The state Division of Child Protection and Permanency (CP&P), formerly known as the Division of Youth and Family Services (DYFS), has placed a child in your home. You may be related to the child, a close friend of the family or perhaps the child has been in your home for a long time. Your CP&P case manager has explained that it is unlikely the child will return to their parents. CP&P is asking you to make a permanent commitment to raise this child. You have lots of questions. What are your options? What financial supports will be available to you?

It is important for you to understand the different permanency options available to you and the child in your home. You should learn about all the options, the financial supports available with each, and how those supports may affect other benefits you receive before making your final decision.

This guide gives you an overview of one permanency option – **kinship legal guardianship (KLG)** – as a first step toward making this all-important decision

What is Permanency?

The laws governing child abuse/neglect cases are based on the concept of *permanency* - the belief that children grow up best in stable families and that every child needs nurturing from a consistent person who is committed to the child's care and well-being. The parent-child relationship is critical to the child's healthy development. This bond strongly influences how a child grows both emotionally and physically. The quality of that bond can profoundly affect the relationships children have with other people in their lives. Achieving permanency is especially important for children living in foster care because they lack or have lost this consistent, permanent family relationship.

In most cases, when children enter foster care, CP&P has a legal obligation to offer services and work with the parents to address the problems that resulted in the child being placed into foster care in the first place. The goal is to return the child to his/her biological parents and achieve **family reunification**. While the child is living in foster care, the legal responsibility for the child is shared between CP&P, you as the resource parent who has day-to-day responsibility for the child and the birth parents who still retain parental rights and want their child returned to them. This is why foster care is considered *temporary*.

When a child remains in foster care for one year and efforts to reunify the child and parent are unsuccessful, the law requires CP&P to find an **alternative permanent home**. CP&P should ask you if you are interested in providing a permanent home for the child.

For many children, adoption is ideal when the child cannot be reunified with their birth parents since it is the most permanent legal arrangement, giving the child a new *forever family*. For adoption, the judge must first take away, or **terminate** the birth parents' rights, and then award those rights to the adoptive parent(s). CP&P makes the decision whether to file a complaint seeking to terminate parental rights.

The law recognizes that adoption is not possible in all situations. For example, you may love and be willing to raise the child, but the child may be older and want to maintain a relationship with his or her parents, even though the parents are unable to take care of the child. The child still needs a **legal** permanent home that will provide stability until the child is at least 18 years old, if not longer. You may be a relative or close friend of the parent who has a disability that prevents them from parenting, but who loves their child and wants to be involved in their life. Next to adoption, kinship legal guardianship is the most permanent legal option. You legally assume responsibility for the care and support of the child, but the parents retain certain rights.

What is a Kinship Legal Guardian (KLG)?

As the **kinship legal guardian**, you will have almost all the same rights, responsibilities and authority relating to the child as a birth or adoptive parent. These include:

- making decisions concerning the child's care and well-being,
- consenting to routine and emergency medical and mental health needs,
- arranging and consenting to educational plans for the child,
- applying for financial assistance and social services the child is eligible for,
- ensuring the maintenance and protection of the child,
- being responsible for activities necessary to ensure the child's safety, permanency and well-being,
- applying for a driver's license, and
- approving an application for admission to college.

You may not change the child's name, adopt the child or agree to an adoption of the child by another person without the parents' consent or a court order.

The **parents** retain:

- the right to visit the child as determined by a judge,
- the authority to consent to adoption or a name change,
- the obligation to pay child support, and
- the right to later seek to vacate the KLG judgment.

The **child** keeps:

- his/her current home,
- a relationship with his/her parents, siblings and relatives, and
- the right to any benefits derived from his/her parents (inheritance, eligibility for benefits or insurance).

Kinship legal guardianship ends when the child turns 18 years old or when the child completes high school, whichever occurs later. A judge can also decide to end the kinship legal guardianship arrangement for certain reasons before a child turns 18.

Once kinship legal guardianship is established, it is difficult but not impossible to change. The parent(s) can ask the judge to return custody of the child to them at a later date. To change the final judgment, the parent must show **clear and convincing evidence** that the parent's inability to care for the child no longer exists and that termination of the kinship legal guardianship arrangement is best for the child. A KLG order may also be changed if a judge finds that you failed to or are unable to provide proper care for the child, or if the arrangement is no longer in the child's best interest.

A parent can ask for their visitation to be increased. You should share any concerns you have regarding ongoing contact with a parent with your case manager and/or the law guardian. Perhaps a family team meeting or a court mediation can be scheduled to resolve these concerns prior to your making a final decision. It is important for the child that you and the parents be able to facilitate visitation and other issues concerning the child as she or he grows up. Any concerns should be reflected in the final court order.

When Can You Become A KLG?

To become a kinship legal guardian, CP&P must clearly prove certain facts to the judge, including:

- you have a legal, biological or emotional relationship with the child,
- the child has lived in your home for at least the last six consecutive months, or nine of the last 15 months,*
- the parents have a **serious incapacity** that makes them unable, unavailable or unwilling to parent their child for the foreseeable future. Some examples are a long-term jail sentence, a serious, long-term drug or alcohol problem, a serious, documented mental illness or a parent who has been missing for a significant period of time,
- you are committed to and have the ability to raise the child to adulthood, and
- services offered to the parents were not accepted or did not fix the problem that caused the child to be placed in your home in the first place.

**The revised KLG statute, which became law in July 2021, reduced the required length of time in kinship care from 12 to six months. In addition, CP&P is no longer required to show that it is unlikely or not feasible that the child will be adopted. However, CP&P should still work with parents for at least one year before changing the plan from reunification to an alternative plan.*

Questions to Ask When Making Your Decision

- Has the child been living in your home for at least the last six months, or nine of the last 15 months?
- Is this arrangement likely to continue indefinitely?
- How well do you interact with **both** parents?
- Are you physically able to raise this child to adulthood?
- Are you emotionally committed to raising the child?
- Have you successfully dealt with the child's needs concerning child care, school, medical and dental care?
- Can you support the child until he/she becomes an adult?
- Can you and the child continue to live in the same location or will you have to relocate because you are in senior housing or some other restricted housing?
- Will you move to another state before the child turns 18? The NJ Supreme Court ruled that if the parent disagrees with you moving out-of-state, you as the KLG have to show that you have a good faith reason for moving and that the move will not be harmful to the child's best interests.
- If you are married or in a permanent relationship, is your spouse or partner also willing to become the child's legal guardian? You may want your spouse or partner to become a legal guardian with you. That way, if something happens to you, your spouse or partner retains legal rights over the child, giving the child stability.

Kinship legal guardianship is a long-term commitment to a child. You should carefully consider whether you can make that commitment and if you are ready to meet the responsibilities of raising a child to adulthood.

Process to Become a KLG

If you want to become a KLG and CP&P agrees to this long-term plan, the CP&P case manager will complete a **Kinship Legal Guardianship Assessment** with your help. Much of the information for the assessment may already be in the child's case record.

The assessment includes the following information:

- how the child came to live in your home,
- your relationship to the child,
- what the parents' problems are,
- the whereabouts of the parents and their wishes, if known,
- information regarding any property or assets that the child may own, and
- your commitment and ability to raise the child.

Certain background checks must be completed on you and any adults living in your home, including a criminal history check, a domestic violence central registry check and a child abuse registry check. These background checks may have already been completed to license your home as a resource family, but may have to be updated. Relatives must complete the same process as non-related resource families. You need to cooperate with CP&P in completing this paperwork. Once completed, the assessment is given to the judge.

The attorney for CP&P, called a Deputy Attorney General (DAG), makes a **Motion to Amend the Complaint** in court. This motion asks the judge to make you the kinship legal guardian and end the current court case. The parent's attorney can also request that you be appointed kinship legal guardian, but CP&P and the law guardian, who represents the child, must agree. **It is important to remember that you have a say in this decision. Any children over the age of 12 also have a say in this decision.**

Once the judge reviews the evidence and listens to what everyone has to say in court, the DAG's motion may be granted, denied or a court hearing may be scheduled for the judge to obtain additional facts. If granted, the judge will issue a **Final Order** and dismiss the CP&P court case. That means the CP&P case will be closed and you are appointed as the child's kinship legal guardian.

Along with the final order, you will receive a **Judgment for Kinship Legal Guardianship** signed by the judge, which clearly states the decision-making authority you have over the child. It should be kept with your important papers. It will not say that this was a CP&P case. Copies of this judgment can be given to schools, doctors or others needing written documentation of your authority of legal guardianship over the child.

Appearing in Court

You will probably have to appear in court for the above-mentioned hearing in order for the judge to decide whether kinship legal guardianship is the right arrangement for you and the child. This may be in person or at a virtual hearing as result of COVID-19.

You may become a **witness** for either CP&P, one of the parents or the law guardian. One of the lawyers should help you prepare for the court hearing. If you have any special needs, such as an interpreter, you should make sure the CP&P case manager or the law guardian notifies the court prior to the hearing.

Although the hearing may be somewhat informal, there are certain rules that apply, even if the hearing is virtual. Arrive on time. You may only be allowed in the courtroom when it is your time to speak, so you may want to bring reading material with you. You cannot eat or drink in the courtroom. Turn off all cell phones and other electronic devices before you enter the courtroom. Do not bring the child or children to court unless you are asked to do so.

At the beginning of the hearing, you will be asked to swear to tell the truth. You should wait until the judge or one of the attorneys asks you a question before speaking in court. Tell only the facts that you know to be true. If someone else has information that is relevant, tell one of the attorneys so that the person can be asked by one of the attorneys to come to court as a witness. You cannot tell the judge what someone else told you. That is called **hearsay** and is generally not allowed in court.

If you have any questions about the process, your responsibilities for the child or your rights, you should discuss them with the law guardian or your CP&P case manager before the court hearing. For example, you should explain any concerns you have about the parents having contact with the child to the case manager and/or the law guardian. These concerns may affect the visitation the parents are given. **Once the case is closed, CP&P will no longer be arranging visits.** It will be your responsibility to comply with any visitation schedule set forth in the court order. If you still have questions or concerns when you get to court, be sure to let the judge know that you have some questions during the hearing.

If the child's parents object to you becoming their child's kinship legal guardian, they will be given a chance to tell their story to the judge. You need to be respectful, listen to what is said and wait until the judge asks for a response before speaking again. This may be difficult, but it is important for the judge to learn all the facts and to listen to both sides.

What Financial Supports Are Available?

As a KLG, you continue to receive the same monthly board payment that you received as a licensed resource family. This **KLG subsidy** will continue until the child turns 18 or graduates high school, whichever occurs later. However, there are certain limitations:

- CP&P can deduct any direct income the child receives through sources like Supplemental Security Income (SSI) or child support payments from the monthly board payment,
- the payment cannot be increased if the child's needs change and could end if you move out of state, and
- the subsidy may count as "income" to you when determining eligibility for other public benefits.

The child continues to receive health insurance under Medicaid (NJ FamilyCare) if your family's insurance does not cover the child for as long as you live in New Jersey. If you move out of state, you will need to qualify for Medicaid in your new home state. CP&P must determine and approve the KLG subsidy agreement prior to the court hearing to finalize the kinship legal guardianship.

The Kinship Navigator Program

Once you become the kinship legal guardian **and your CP&P case is closed**, you may also qualify for help from the **Kinship Navigator Program if you are a relative**. The program provides financial assistance with child care expenses and **wrap-around services** (short-term or one-time expenses related to the child such as tutoring, furniture, moving costs or clothing expenses). However, funds are limited, and this is not an entitlement program.

To contact the Kinship Navigator Program, dial 2-1-1. You will be referred to the local kinship agency, which will work with you to access services.

Adoption Subsidy

Since it is important to be able to financially provide for a child, you may want to compare the financial help available to kinship legal guardians to the financial supports available through adoption. New Jersey, like other states, provides financial help to families who adopt **special needs** or **hard-to-place** children. Most children who are adopted from foster care in New Jersey are eligible for a subsidy.

CP&P must determine and approve the subsidy agreement prior to the completion of an adoption proceeding. You can ask your CP&P case manager what supports you would be eligible for, should you decide to adopt.

Like the KLG subsidy, the adoption subsidy is 100% of the monthly board payment until the child turns 18 or completes high school, whichever occurs later. However, other adoption supports/benefits tend to be more generous than kinship legal guardian supports. These include:

- Adoption subsidies can exceed the regular board payments if additional funds are needed to meet the child's special needs that are not covered by Medicaid or your family's insurance. Medicaid continues if you move out-of-state.
- Adoptive parents receive a payment for adoption expenses, such as legal fees and court costs.
- Those who adopt can take a federal tax credit the year the child is adopted. For details, visit the North American Council on Adoptable Children, a non-profit that works to ensure all children in foster care have permanent, loving families and adoptive families have the support they need, at www.nacac.org.

If you are interested in becoming the child's kinship legal guardian, call your CP&P case manager or your case manager's supervisor to discuss whether a kinship legal guardianship arrangement is the appropriate permanent plan for the child living in your home. You should also talk to the child's law guardian. Remember, it is very important that you carefully explore all of your legal options and decide the best way for you to provide your child with a safe, loving, permanent home.

For more information about adoption and/or if you have questions about whether you should adopt, contact the **New Jersey's Adoption Resource Clearing House (NJ-ARCH)**. The toll-free number is **1-877-4ARCHNJ (1-877-427-2465)**. Or visit NJ-ARCH's website at www.njarch.org

Every child living in foster care has been assigned an attorney called a **law guardian**. Contact information for the law guardian offices can be found at <http://www.state.nj.gov/defender/structure/olg/>

Court-Appointed Special Advocates (CASA) are volunteers assigned by the judge to advocate on behalf of children living in foster care. Not every child has a CASA. To locate the local CASA program, visit CASA of New Jersey's website at www.casaofnj.org, call 609-695-9400 or email info@casaofnj.org

Other Helpful Resources

Department of Children and Families

Contact information for all local and area CP&P offices can be found at <http://www.state.nj.us/dcf/about/divisions/dcpp/>

Division of Children's System of Care

This division provides children's behavioral health services. One service available to resource families through DCBHS is Mobile Response and Stabilization Services (MRSS): time-limited, intensive, preventive services that include behavioral and rehabilitative interventions designed to diffuse, mitigate and resolve an immediate crisis. To access MRSS, call 1-877-652-7624.

Division's Office of Advocacy

Constituents with inquiries, concerns or questions about CP&P or the Children's System of Care and its services can reach the Office of Advocacy by calling the toll-free number 1-877-543-7864, Monday through Friday from 8:30 a.m. to 4:30 p.m. You may also email them at askdcf@dcf.nj.gov

Embrella

This non-profit answers questions, as well as provides support and training. Call 1-800-222-0047 or visit www.embrella.org. Embrella also offers vocational and higher educational financial assistance and support to foster and adoptive children.

The Family Helpline (1-800-THE KIDS) (843-5437) is a 24-hour statewide phone line provided through Parents Anonymous, offering a place to vent, find information and obtain referrals and crisis intervention. Visit www.njparentlink.nj.gov/njparentlink/hotlines