

Kinship Legal Guardianship

A permanency option in DCP&P cases



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Kidlaw Resource Center

Advocates for Children of New Jersey

35 Halsey Street
Newark, NJ 07102
973-643-3876
973-643-9153 fax

www.kidlaw.org
www.acnj.org

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 DCP&P case manager, the child's attorney (law guardian) and the attorney for DCP&P (Deputy Attorney General or DAG). For more information or if you have questions not answered in this guide, contact Mary E. Coogan, at mcoogan@acnj.org.

The **Kidlaw Resource Center** offers information, assistance, training and legal publications about the rights of children. The center provides free fact sheets, manuals and other information. Staff is available to provide presentations and training on children's legal rights to community groups and professionals. Visit www.kidlaw.org for more information and other written materials on children's legal rights.

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Introduction

The state Division of Child Protection and Permanency, (DCP&P), formerly the Division of Youth and Family Services or 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 is unrelated but has been in your home for a long time. Your DCP&P case manager has explained that it is unlikely the child will return to his parents. DCP&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. It also provides information about adoption supports.

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. The parent-child bond strongly influences how a child grows – both emotionally and physically. The quality of that bond can profoundly affect the relationships children have with all the 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, DCP&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. 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 DCP&P, you 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 should be *temporary*.

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

Adoption is ideal for children who cannot be reunified with birth parents because it is the most permanent legal arrangement, giving a child a new *forever family*.

For a child to be adopted, the judge must first take away or **terminate** the birth parents' rights and then award those rights to the adoptive parent(s). DCP&P makes the decision whether to file the 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, which will provide stability for the child to at least age 18, if not longer. 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 of 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 for which the child is eligible,
- ▶ 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 motor vehicle operator'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 with the child as determined by the judge,
- ▶ the authority to consent to adoption or a name change of child,
- ▶ 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 her/his 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 event 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.

When Can You Become A KLG?

To become a kinship legal guardian, DCP&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 12 consecutive 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,
- ▶ services offered to the parents were not accepted or did not fix the problem that caused the child to be placed in your home, *and*
- ▶ it is unlikely or not feasible that the child will be adopted.

Questions to Ask When Making Your Decision.

- ▶ Has the child been living in your home for at least the last 12 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 feel ready to meet the responsibilities of raising this child to adulthood.

Process to Become a KLG.

If you want to become a KLG and DCP&P agrees to this long-term plan, the DCP&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 DCP&P in completing this paperwork. Once completed, the assessment is given to the judge.

The attorney for DCP&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 DCP&P and the law guardian, who represents the child, must agree. **It is important to remember that you 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 DCP&P court case. That means the DCP&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 DCP&P case. Copies of this judgment can be given to the school, doctors, or

others needing written documentation of your authority or 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.

You may become a **witness** for either DCP&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 DCP&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. Please 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. Please turn off all cell phones and other electronic devices before you enter the courtroom. Do not bring the child(ren) unless 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 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 DCP&P case manager before the court hearing. If you still have questions when you get to court, be sure to let the judge know that you have some questions during the hearing.

You should explain any concerns you have about the parents having contact with the child to the case manager, law guardian and/or the judge. These concerns may affect the visitation the parents are given. **Once the case is closed, DCP&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 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?

The legal arrangement between you and the child determines the financial supports available to you. Financial supports available through adoption can be more generous than those available to kinship legal guardians.

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:

- ▶ DCP&P can deduct from that amount any direct income the child receives through sources like Supplemental Security Income (SSI) or child support payments,
- ▶ 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 in determining eligibility for other public benefits.

The child continues to receive health insurance under Medicaid (NJ FamilyCare) 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.

The Kinship Navigator Program.

Once you become the kinship legal guardian, **and your DCP&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.

Caregivers who are under age 60 are eligible for assistance if their household income does not exceed 350 percent of the federal poverty level. Those over age 60 qualify if their household income does not exceed 500 percent of the federal poverty level. These income guidelines are adjusted each year. For more information, visit the NJ Department of Children and Families website at <http://www.nj.gov/dcf/families/support/kinship/>

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 so 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.

In New Jersey children are considered **hard-to-place** if they have:

- ▶ A health problem that requires frequent medical or dental treatments;
- ▶ A physical handicap that makes or is expected to make the child partially or totally unable to attend school or get a job;
- ▶ Major disfigurement;
- ▶ A diagnosed psychological or psychiatric problem or is mentally retarded and unable to relate to peers or authority figures;
- ▶ Children at certain ages or who come from certain situations, including:
 - Children who are one of a group of three or more siblings, and who must be placed together;
 - Siblings of children who meet the hard-to-place criteria, and who must be placed together;
 - Children over age 10;
 - Children over age 2 who are a member of an ethnic group with few available adoptive homes;
 - Children over age 5 who have been living with foster parents for at least 12 months and for whom adoption by the foster parents is the most appropriate plan.

- ▶ Any other condition that may be approved by the DCP&P director.

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

Like the KLG subsidy, the adoption subsidy is 100 percent 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.
- ▶ Payments continue if you move out-of-state.
- ▶ Medicaid continues if you move out-of-state.
- ▶ Payments are available for expenses to treat certain health or mental problems not covered by Medicaid or other insurance.
- ▶ Special services are available, such as post-adoption counseling and respite care.
- ▶ 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, www.nacac.org.

If you are interested in becoming the child’s kinship legal guardian, call your DCP&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 **New Jersey's Adoption Resource Clearing House (NJ-ARCH)**. The toll free number is **1-877-4ARCHNJ (1-877-427-2465)** or call 973-763-2041. Or visit NJ-ARCH's website at www.njarch.org

Every child in foster care has been assigned an attorney called a **law guardian**. Contact information for the law guardian offices can be found at www.kidlaw.org.

Each county has **Child Placement Review (CPR) Boards**, which are made up of trained volunteers to monitor the cases of children living in foster care. You should be invited to a board hearing within 45 days of the child's placement into foster care. For contact information for county CPR Boards, visit the NJ Child Placement Advisory Council's website at www.njcpac.org or call 609-633-2581.

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 or call (609) 695-9400.

Other Helpful Resources.

Department of Children and Families

Contact information for all local and area DCP&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 DCP&P or the Children's System of Care and its services can reach the Office of Advocacy by calling a toll free number, 1-877-543-7864, Monday through Friday from 8:30 a.m. to 4:30 p.m. You may also email DCF at askdcf@dcf.state.nj.us.

Foster and Adoptive Family Services (FAFS) answers questions, provides support and training. 1-800-222-0047; www.fafsonline.org. FAFS offers vocational and higher educational opportunities to foster and adoptive children.

The Family Helpline (1-800-THE KIDS), a 24-hour statewide phone line provided through Parents Anonymous, offers a place to vent, information and referrals and crisis intervention. www.pa-of-nj.org.