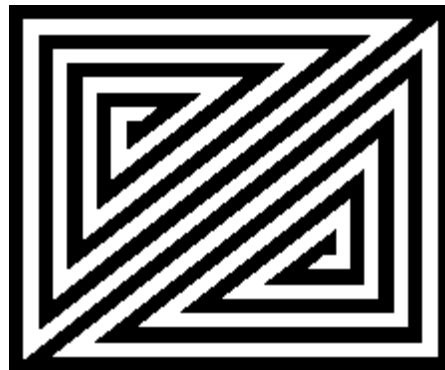


# **Away from Home:**

## **Children & Youth Living Apart from their Parents**



**Guardianship and Other Options  
for Family & Friends  
Caring for Children & Youth**

## **Who are the children and youth we're talking about?**

No one knows the exact number, but many children and youth in New Mexico are being raised away from their parents. They may live with relatives or with friends. Perhaps the parent has a substance abuse or other problem and can't take care of the child. Maybe the young person is a runaway or a "throwaway" who cannot or will not go home. Perhaps grandparents are raising their grandchildren. These caregivers need the legal authority (the power) to make educational, medical, and mental health decisions for the child.



## **What are the options?**

Children and youth who are living away from home still need care. They need supervision by an adult. When family or friends are willing to take care of the young person, there are a number of choices they can make. This booklet will briefly describe some of those choices. The booklet will also explain the possible benefits of each option. The options include:

- ▶ Kinship Guardianship
- ▶ Power of Attorney
- ▶ Caregiver's Authorization Affidavit
- ▶ Emancipation
- ▶ Adoption
- ▶ Foster Care

## **What is Kinship Guardianship? When is that an option?**

Kinship Guardianship is a way for a caregiver who is not a parent to get legal parental rights. With a Kinship Guardianship, the parents' rights to the child are suspended. The parental rights are given to the child's caregiver.

A Kinship Caregiver does not have to be a biological relative of the child. A Kinship Caregiver is an adult the child lives with. A Kinship Caregiver provides the child with care and supervision.

In order to be legally named a Kinship Guardian, the caregiver must file a petition in the district court in the county where the child lives. The caregiver must prove to the judge that the guardianship is best for the child. The caregiver must also prove that either:

1. the parents agree to the guardianship; or
2. both parents are dead or they have had their parental rights terminated; or
3. the child has lived with the caregiver for at least 90 days before the petition is filed, and the parents can't or won't provide care and supervision for the child.



### **Kinship Guardianship...**

- gives the caregiver all parental rights;
- has no time limit;
- requires that the parental rights of the child's parents be suspended by court order, but not terminated;
- leaves the door open for the child and the parent to live together again in the future.

## More About Kinship Guardianship

Kinship Guardianship is a new part of New Mexico law (NMSA 1978 40-10B-1 *et seq*). The law was passed in 2001 and is called the Kinship Guardianship Act. Since this is new, there are some other things you might want to know.

- ▶ This law (Act) cannot be used to take young people away from their parents. The Act can only be used when the young person is already living with a caregiver.
- ▶ Young people over 14 years old can say who they may want to be their guardian. They have to have been living with that person for at least 90 days. The court has to agree that this arrangement is in the youth's best interest. A young person can't just decide to live wherever he or she wants.
- ▶ When a person becomes a guardian for a young person, he or she has all the rights *and responsibilities* of a parent. That means the guardian is responsible financially for the young person. It also means the guardian could be responsible if the young person does something against the law.
- ▶ Parents have their rights to the young person suspended. But that does not mean the parents have no financial responsibility. The judge could order parents to pay child support to the guardian.
- ▶ The judge could also order that the parents can visit with their child. If this is not ordered, the guardian must decide if visits from the parent are good for the child.
- ▶ Parents can ask the judge to take away the Kinship Guardianship and give parental rights back to the parents. But if they do, they have to give the judge a "transition plan." This plan must show how the young person's move back home will happen.



## **What is a Power of Attorney? When is that an option?**

A Power of Attorney is like a “permission slip” from the parent. It tells other people, such as doctors or teachers, that another adult can make decisions for the young person. It shows that the other adult can sign in place of the parent. A Power of Attorney is not legal unless the parent signs it in front of a Notary Public. By signing a Power of Attorney, the parent does not give up any parental rights.

A signed and notarized Power of Attorney...

- gives a child’s caregiver authority to act on behalf of the child,
- requires the parent to agree,
- is valid for up to six months and can be taken back any time.



## **What Is a Caregiver’s Authorization? When is that an option?**

A child would live with a caregiver, and the parent might not be involved at all. Perhaps the parent cannot be found, is dead, or refuses to cooperate with the caregiver. In this case, the caregiver can sign a Caregiver’s Authorization Affidavit. This is a legal paper that allows the caregiver to enroll the child in school. Caregivers can also make decisions about the child’s medical, dental, or mental health care.

A Caregiver’s Authorization Affidavit does not give the caregiver legal custody of the child. It does not terminate or suspend the parent’s legal rights. If a parent does not agree with the caregiver about the child’s medical, dental, or mental health care, the parent could still have the final word, unless the child’s life, health, or safety are threatened. If the child stops living with the caregiver, the caregiver must notify everyone who has a copy of the Affidavit.

A signed and notarized Caregiver’s Authorization Affidavit...

- authorizes the caregiver to enroll the child in school and make decisions about the child’s medical, dental, or mental health care;
- has no effect on parental rights;
- is valid for up to one year.

## **When is emancipation an option?**

A legal emancipation means the young person is on his own. His parents are no longer responsible for him. A judge has to issue a "Declaration of Emancipation." In order to get a Declaration of Emancipation, a young person must be 16 or older. She must be living separately from her parents. She must be able to support herself, and manage her own financial affairs. Emancipations are not given by the courts very often. Judges would rather make another adult responsible than have no adult responsible for a child. An emancipated minor can get the same public benefits as an unemancipated minor, including public assistance. An emancipated minor can register for school, sign contracts, including leases, and authorize medical care.

Emancipation...

- gives the minor all the rights of an adult and makes the minor responsible for himself or herself;
- makes the parents no longer responsible for the child;
- is not granted by the court very often.



## **When is adoption an option?**

Adoption is the most complete and permanent way to obtain legal parental rights. Before adoption can take place, the parents' rights need to be terminated, either by choice or by a court order. It is very difficult to obtain a court order terminating parental rights. However, if parental rights are terminated, adoption gives all parental rights to the new, adoptive parents. A new birth certificate is issued with the name of the adoptive parents instead of the biological parents.

Adoption...

- gives a caregiver all parental rights permanently;
- requires that the parental rights of the biological parents be given up or terminated by court order.

## **When is foster care an option?**

In New Mexico, foster care is only available if the young person has been removed from home and placed in the custody of the State's Children, Youth, and Families Department (CYFD). If a child in CYFD's custody needs to be placed in foster care, CYFD will first try to find a qualified relative. All foster care providers – including relatives – must be trained and licensed. Foster parents receive monthly subsidies to help them pay for the care of the child.

CYFD will only take custody of a child if the child is at risk of immediate harm in the home where he is currently living. If a child is safe in a caregiver's home, CYFD will not take custody of the child. If you believe that a child is at risk of immediate harm, you should call the Child Abuse Hotline right away. Call 1-800-797-3260, or in Albuquerque, call 841-6100.

Foster care...

- is not intended to be permanent;
- requires that the caregiver be licensed;
- requires that the child be in the custody of the State.



## **There may be government benefits available.**

No matter what the option – whether Kinship Guardianship, Power of Attorney, or Caregiver's Authorization Affidavit – the caregiver may apply for government benefits for the child they are taking care of:

- All young people who have been living apart from their parents for over 30 days can get health insurance through Medicaid, Section 32.
- Social Security, SSI, and Veteran's benefits are determined by program eligibility, not by where the child lives or with whom. These benefits could be given monthly to the caregiver.
- Eligibility for Food Stamps, TANF, and WIC is determined by household income and household size through the Income Support Division (ISD) of the Human Service Department (HSD). The caregiver family could qualify.

## **Where can you go for more information and help?**

**Kinship Guardianship** is a legal issue. If you are interested in Kinship Guardianship, it would be best for you to consult an attorney. If you don't have your own attorney, contact your local legal aid program. You can check with the New Mexico State Bar Association's Lawyers Care Referral program (505-797-6066 or 1-800-876-6227). You can also ask for Kinship Guardianship without an attorney, representing yourself. Check with the court clerk at your local District Court for more information, including the forms you might need.

The **Power of Attorney** is basically a "permission slip" from the parent. You can write your own Power of Attorney. If you want samples of Power of Attorney forms, you could consult your local legal aid program, speak to an attorney, or even pick up a "generic" form at an office supply store.

For a **Caregiver's Authorization Affidavit**, a specific form is required. You can find and print a copy of that form on the computer. Go to the official New Mexico Supreme Court website ([www.supremecourt.nm.org](http://www.supremecourt.nm.org)). Click on "Legal Forms," go to Domestic Relations forms, and then go to the Caregiver's Authorization Affidavit. If you do not have a computer, go to your local library and ask a librarian to help you.

For more information about **foster care or adoption**, contact CYFD's Foster a Future Program, 1-800-432-2075.



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