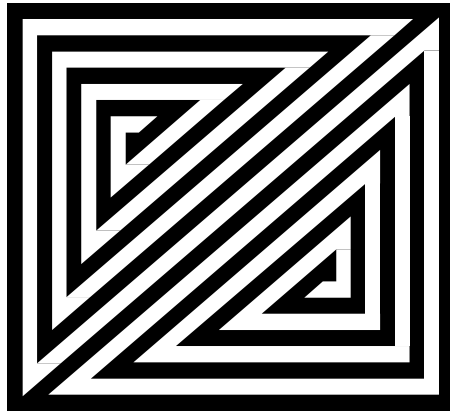


*Away from Home:  
Children & Youth Living Apart  
from their Parents*



*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 has run away and cannot or will not go home. Perhaps grandparents are raising their grandchildren. In order to make many of the educational, medical, and mental health decisions for the child, these caregivers need some form of legal authority.



## Do I need legal authority over a child to...

### **Enroll the child in school: NO**

Children who are not living with a parent or legal guardian are considered "homeless" under the federal McKinney-Vento Act. Under the Act, a child who is homeless does not need the signature of a parent or legal guardian to enroll in school and does not have to have immunization records or school transcripts in order to begin attending school.

### **Authorize medical care for the child: YES**

In order to authorize medical care for the child you do need to have legal authority. (Children can consent to their own reproductive health care.)

### **Authorize mental health care for the child: YES & NO**

Any child has the right to consent to individual or group therapy, guidance, or counseling. A child 14 years of age or older can give his or her consent to psychotropic drugs or residential treatment, but the parent or legal guardian must be notified. If the child is under 14, you must have legal authority and give consent before psychotropic drugs can be administered or a child admitted to a residential treatment center.

### **Prevent the parent from coming and taking the child: YES**

If a child is living with you, and the parents still have legal custody, the parent can come and remove the child at any time. However, if you have concerns for the child's safety, you should call the police. It should also be noted that the police will often refuse to make a child 15 or over go back to their parents if they do not want to.

## What are the options for getting legal authority?

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 and explain the possible benefits of some of those choices. The options include:

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



## 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 the parents agree to the guardianship, both parents are dead or have had their parental rights terminated, or 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 Mexico Law (NMSA 1978 40-10B-1 *et seq*) that was passed in 2001. The law is called the Kinship Guardianship Act. Some things you might want to know are:

- 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 would like to be their guardian. However, they have to have been living with that person for at least 90 days. Also, the court has to agree that this arrangement is in the youth's best interest.
- 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.



Kinship Guardianship is a legal issue. If you are interested in Kinship Guardianship, it would be best for you to consult an attorney. However, you can also petition for Kinship Guardianship without an attorney, representing yourself. You can get the forms you need on the official New Mexico Supreme Court website (<https://nmsupremecourt.nmcourts.gov>). Click on *Rules, Forms & Opinions*, select *Forms*, select *District Court Forms*, and select *Civil*. You will see many forms listed there. The forms that are specifically for Kinship Guardianship cases are Forms 4-981 through 4-991. Check with the court clerk or Pro Se Clinic at your local District Court for more information.

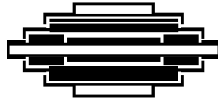
## **What Is a Caregiver's Authorization? When is that an option?**

This is an option when a child or youth is living 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**



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:

<http://www.nmadvocacy.org/home/files/Caregiver's%20Affidavit.pdf>

If you do not have a computer, go to your local library and ask a librarian to help you.

## **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.

You can write your own Power of Attorney. If you want sample forms, consult your local legal aid program, speak to an attorney, or even pick up a “generic” form at an office supply store or on the internet.

### **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**



## **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 Children, Youth & 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 Statewide Central Intake (SCI) at **1-855-333-SAFE [7233]** or **#SAFE** from a cell phone.

### **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**

## When is adoption an option?

Adoption is the most complete and permanent way to obtain legal parental rights. Before adoption can take place, both parents' rights must 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

For more information about **foster care or adoption**, contact CYFD at 1-800- 432-2075.



## There may be government benefits available.

No matter what the option – Kinship Guardianship, Power of Attorney, or a Caregiver's Authorization Affidavit – caregivers 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.
- The child may be eligible for Social Security, SSI, or Veteran's benefits. These are determined by program eligibility, not by where the child lives or who has legal custody. If the child is eligible, the caregiver can become the payee for the child's benefits.
- The caregiver family could be eligible for SNAP Benefits/Food Assistance or Temporary Assistance for Needy Families (TANF)/Cash Assistance through the Income Support Division (ISD) of the Human Service Department (HSD). The caregiver family might also be eligible for the Women, Infant, Children (WIC) Supplemental Food Program through the Department of Health.

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

If you are a grandparent, other relative, or another adult caring for a child, you may need help with legal questions – especially if you want to become the child’s legal guardian.

Here are some services that might be helpful:

- **Lawyer Referral for the Elderly Program** – legal information, brief services, and referrals for New Mexicans 55 and older; 505-797-6005 or toll-free 800-876-6657 (<http://www.nmbar.org/public/lrep.html>)
- **Bridge to Justice Referral Program** – 30 minute consultations with private attorneys for a reduced fee; 505-797-6066 or toll-free 800-876-6227 (<http://www.nmbar.org/public/referralprograms.html>)
- **New Mexico Legal Aid** – free legal representation in civil cases to qualified low income people throughout New Mexico; 866-416-1922 (<http://www.nmlegalaid.org/>)
- **Senior Law Center** – free legal services to seniors over age 60 in Albuquerque; 505-265- 2300 (<http://sclonm.org/>)
- **Law Access New Mexico** – statewide legal hotline for low-income New Mexico residents with civil legal problems; 505-998-4529 or toll-free 800-340-9771; Kinship Guardianship Program and Guardianship HelpLine - Albuquerque: 217-1660 / Statewide: 800-980-1165 ([www.lawhelp.org/program/3577/](http://www.lawhelp.org/program/3577/))
- **Advocacy Inc. Guardianship Project** – sliding fee scale legal services to grandparents and other caregivers in uncontested guardianship cases; 505-266-3166 (<http://www.nmadvocacy.org/home/node/2>)
- **Pegasus Legal Services for Children** – free and sliding fee scale legal services on civil cases involving children; 505-244-1101 ([www.pegasuslaw.org/](http://www.pegasuslaw.org/))
- **DNA-People’s Legal Services, Inc.** – providing free legal services in civil matters to qualified low- income residents on and near the Navajo Nation; 928-871-4151 ([www.dnalegalservices.org/](http://www.dnalegalservices.org/))



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For more information about the New Mexico Court Improvement Project, go to <http://www.nmcourts.gov/CourtImprovement/> or contact the Administrative Office of the Courts, 505-827-4800.