

# Grandparents and Other Non-Parent Kinship Families: Legal Rights

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to [NCLER@acl.hhs.gov](mailto:NCLER@acl.hhs.gov).
- Written materials and a recording will be available at [NCLER.acl.gov](http://NCLER.acl.gov). See also the chat box for this web address.

# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

# About NYS Kinship Navigator

[www.nysnavigator.org](http://www.nysnavigator.org); 877-454-6463

- **Information**
  - Legal Fact Sheets, Guide Books, Articles
  - County Resources
  - Helpline/website
- **Referral**
  - Case Management Programs
  - Support Groups
  - Legal Referral Network
- **Education**
  - Local and Statewide Presentations
  - Online Video Archive
  - Legislative education
  - Film “The Face of Kinship Care”
- **Advocacy**
  - Case by case advocacy
  - Statewide advocacy

# About Texas Legal Services Center

[www.tlsc.org](http://www.tlsc.org); Kincare Taskforce: 866-979-4343

State-wide nonprofit organization whose mission is to serve the underserved by making civil justice accessible to every Texan – no matter their ability to earn.

We're a coalition of attorneys, paralegals, pro bono attorneys, partner organizations, and a team of support staff, working tirelessly to serve everyone who reaches out to us for help. Through advice, referrals, counseling, representation, and advocacy, we help Texans navigate the complexities of the civil justice system.

Some examples of how we're working towards civil justice for all: Providing legal representation, counseling, and safety planning for survivors of sexual assault; Hosting monthly family law clinics in rural Texas communities identified as "legal aid deserts"; Addressing food insecurity, income support, and unhealthy living conditions that prevent patients and their families from good health through a medical-legal partnership; Preventing foreclosure and protecting veterans and their families from creditor abuses; Maintaining TexasLawHelp.org, a statewide source for locating civil legal aid providers, legal documents, and information on legal rights; Hosting a legal hotline for Medicare beneficiaries and Texans ages 60 and older; And filing class-action suits that ensure low-income Texans meaningful access to the courts.

# Key Lessons

- Who are Kinship Families
- Outline of their Legal Issues
- Their Perspective: A Right to Care
- Access to Financial Assistance and Other Services
- Special Kinship Care Services

# Kinship Families: Terms

Lack of Uniformity, Under-Inclusive/Exclusive Categories of Care

# Kinship Care

**Kinship care** refers to the **care** of children by relatives or, in some jurisdictions, close family friends (often referred to as fictive **kin**)...

**Kinship care** is commonly **defined** as "the full-time **care**, nurturing, and protection of a child by relatives, members of their Tribe or clan, godparents, stepparents, or other adults who have a family relationship to a child."

[-Definitions from Child Welfare Information Gateway](#)



# Kinship Families: Terms

- Informal versus Formal
- In Loco Parentis
- De Facto Custodian
- Grandfamilies
- Person acting as a parent
- Person in parental relationship
- Relative caregiver (caretaker)
- Non-parent caregiver
- Blood, marriage, adoption
- Degree of sanguinity
- Grandparents

# Scope and Demographics

Dwarfs Child Welfare System, but Similar Causes for Care

# The Children

- 2.56 million children live with a relative with no parent present
- 7.4 million children (10%) of children live in homes where householders are grandparents or other relatives

[-GrandFacts, State Fact Sheets for Grandfamilies](#)

# The Grandparents

- 2.68 million grandparents are householders responsible for grandchildren who live with them.

[-GrandFacts, State Fact Sheets for Grandfamilies](#)

- 140,000 children in foster care

# New York State

- 153,000 children in public and private kinship care
- 24,693 receiving special “child-only” grant
- Fewer than 3,400 children in kinship foster care
  - 20% of All Foster Care
  - NYC vs. ROS

[-Stepping Up for Kids, Anne E. Casey Foundation](#)  
(2012)

# Texas

- 276,000 children in public and private kinship care
- 8,506 children kinship in foster care

[-Stepping Up for Kids, Anne E. Casey Foundation](#)  
(2012)

# Causes, Poverty, and Trauma

Similar to Removals, Unexpected Care, and Adverse Experiences

# Causes

- Mainly Parental Drug Use
- Abuse/Neglect
- Abandonment
- Incarceration
- Mental Illness
- Incapacity
- Other



# Poverty

- 38% of children in public and private kinship care live below the poverty line
- NYS Sample – 38% poverty (national 20%)
- Texas Sample

[-Stepping Up for Kids, Anne E. Casey Foundation](#)  
(2012)

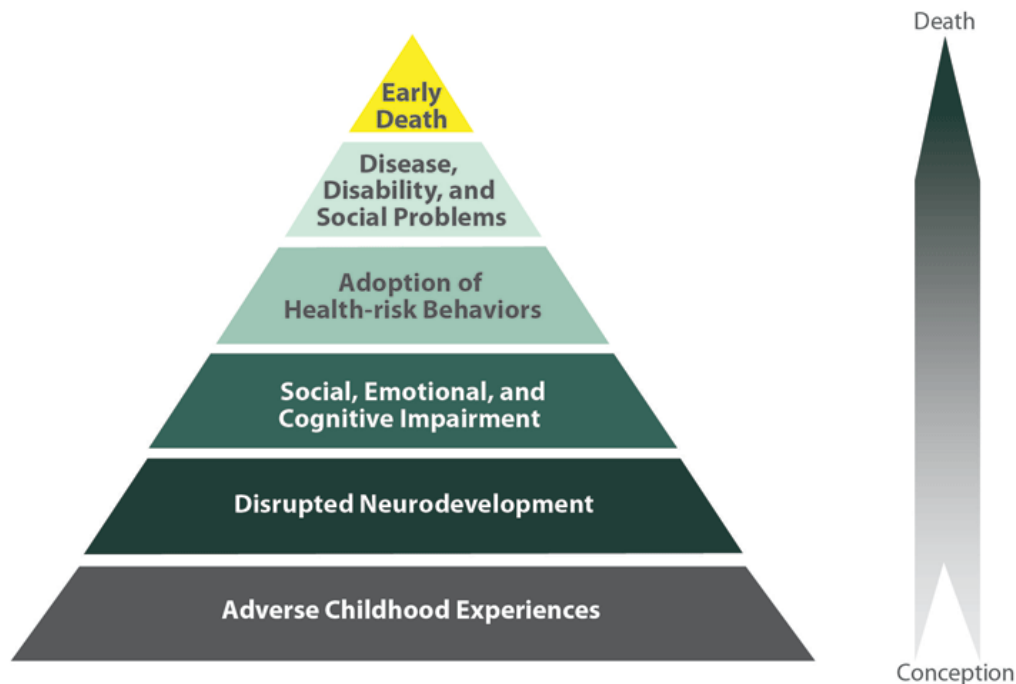
# Trauma/Loss

## Types of Trauma

- Physical Abuse
- Sexual Abuse
- Emotional Abuse
- Physical Neglect
- Emotional Neglect
- Intimate Partner Violence
- Mother Treated Violently
- Household Substance Abuse
- Parental Separation or Divorce
- Incarcerated Household Member

[-Centers for Disease Control ACE Pyramid](#)

# The Adverse Childhood Experiences Pyramid



Mechanism by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

# Value and Special Issues

# Value to Children

- Positive outcomes
- More stable placements
- Continued family contacts

# Special Issue: Aging

- Elder abuse
- Cultural dissonance
- Social disconnection
- Loss of retirement

# Legal Rights

Unmet Expectations: Right to Care and Right to Services

# Kinship Families and “Right” to Care

- Caregiver Rights:
  - Procedural versus Substantive
- *Balbuena v. Mattingly*
- *Johnson v. City of New York*
- *Rodriguez v. McLoughlin*
- *Cabrales v. Los Angeles County*
- *Bellet v. City of Buffalo*
- *Troxel v. Granville*
- *Glisson v. D.O.*

Please see Additional Resources page for full citations



# Parental Rights

- *Meyer v. Nebraska*
- *Pierce v. Society of Sisters*
- *Prince v. Massachusetts*
- *Stanley v. Illinois*
- *Santosky v. Kramer*

Please see Additional Resources page for full citations

# Opportunity to Care for Children

- Versus Parents:
  - When parents consent
  - When parents will not consent
  - When caregivers already reside with children (De Facto custody laws)
- Versus the State:
  - Children in foster care system

# Opportunity to Care for Children

Family law is state law:

- Consent can be removed
- Without consent, must show parent unfit for child or child has lived with you for extended period of time

New York: *Bennet v. Jeffreys*, 51 A.D.2d 544 (N.Y. App. Div. 1976; DRL 72(2)); *Suarez v. Williams*, 134 A.D. 3d, 1479 (2015); 26 N.Y.3d 440, Ct. of Appeals (Dec. 16, 2015)

Texas: *In re H.S.* (Tex. 2018)

# Opportunity to Care for Children in State Care

## State and Federal Law:

- Right to petition for custody
- Right to petition for foster care
- Diversion: When child welfare agency places but there is no foster care
  - No removal (“safety plans” – no proceedings)
  - After removal (proceedings)

# Custodial Arrangements

- Types of arrangements:
  - Informal custody (no court order)
  - Legal custody
  - Child welfare custody
  - Legal guardianship
  - Kinship guardianship
  - Foster care
    - Voluntary placement
  - Adoptions

# Caregiving Issues

Recognition, Authority, Security, Services, Resources

# Authority Issues

- Schooling and school enrollment
- Medical decision-making:
  - Immunizations, routine, major medical
  - Admissions
- Access to records:
  - Birth certificates, Social Security cards, Passports, medical

# Authority

- Informal care: Statutory authority, parental powers of attorney
- Legal custody: Different requirements
- Child welfare: Depends on type of placement
- Foster care: State requirements
- Guardianship: Similar to parents
- Adoption: Replaces parent



# Security

- Informal care: No protections
- Legal custody: Court orders must be challenged
- Child welfare: State retains power
- Foster care: State retains power
- Guardianship: Court must be challenged
- Adoption: Parental rights cease, but sometimes right to contact

# Access to Public Benefits and Programs

- **TANF:** Eligibility rules for “child-only” grant; parent “support”
- **Social Security:** SSI, Grandparent Retirement, SSD
- **Daycare:** May be eligible
- **Medicaid/CHIP:** Eligible
- **FAFSA:** Custody and guardianship differ
- **Income Tax Credits:** 6 month rule

# Access to Other Services

- Legal assistance:
  - Texas Kincare Taskforce
  - NYS Few Legal Services
  - Indigent Assigned Counsel
- Caregiver Support Act 2000
- Prevention: Families First Prevention Services
- Specialized services: Kinship Navigators

# Families First Prevention Services Act

- States can use funds for time limited services aimed at preventing use of foster care in maltreatment cases
- Candidates for entry into foster care can get 12 months of preventive services
- Kinship Navigator Funding
- State Option: includes a maintenance of effort requirement

# Other Recent Federal Changes

## Consolidated Appropriations Act (2018)

- Omnibus Consolidated Appropriations – page 955 (\$20,000,000 for kinship navigators). A second year too!

## Grandparents Raising Grandchildren Act (2018)

- Creates federal Agency Advisory Council

# Additional Resources

Wallace, G. W. (2016). [A FAMILY RIGHT TO CARE: CHARTING LEGAL OBSTACLES](#)  
*GrandFamilies: The Contemporary, Journal of Research, Practice and Policy*, 3 (1).

Legal Citations:

- [Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 \(1923\)](#)
- *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925)
- [Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L. Ed. 645 \(1944\)](#)
- [Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L.Ed.2d 551 \(1972\)](#)
- *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)
- *Bennet v. Jeffreys*, 51 A.D.2d 544 (N.Y. App. Div. 1976; DRL 72(2))
- *Suarez v. Williams*, 134 A.D. 3d, 1479 (2015)
- 26 N.Y.3d 440, Ct. of Appeals (Dec. 16, 2015)

Texas Specific Resources

- Texas Kincare Primer
- <https://texaslawhelp.org/family-divorce-children/grandparents-other-nonparent-caregivers>
- [https://www.dfps.state.tx.us/Child\\_Protection/Kinship\\_Care/default.asp](https://www.dfps.state.tx.us/Child_Protection/Kinship_Care/default.asp)

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# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at [ConsultNCLER@acl.hhs.gov](mailto:ConsultNCLER@acl.hhs.gov).